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Decision

Matter of: Carlsbad Operations Alliance, LLC

File: B-420913.2; B-420913.5

Date: November 8, 2022

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DIGEST

Protest challenging agency evaluation of proposals and tradeoff decision is denied where the evaluation and tradeoff decision were reasonable and consistent with the terms of the solicitation.

DECISION

Carlsbad Operations Alliance, LLC, of Hopkins, South Carolina, protests the award of a contract to Tularosa Basin Range Services, LLC (TBRS),¹ of Reston, Virginia, under request for proposals (RFP) No. 89303320REM000077, issued by the Department of Energy (DOE) for the disposal of nuclear waste. Carlsbad challenges the evaluation of the offerors' key personnel, past performance, and management approaches and argues that the best-value trade-off determination was unreasonable. The protester also contends that the agency engaged in improper communications with the awardee concerning an agency-level protest.

We deny the protest.

¹ TBRS is a limited liability company (LLC) that is a wholly owned subsidiary of Bechtel National, Inc. (BNI). Agency Report (AR), Tab C.1, TBRS Tech. Proposal at 3.

BACKGROUND

The DOE operates a “Waste Isolation Pilot Plant” (WIPP), which is an underground repository for radioactive waste generated at DOE sites. Contracting Officer’s Statement and Memorandum of Law (COS/MOL) at 4. The RFP, issued on June 2, 2021, sought proposals to provide the facilities, personnel, equipment, and services to characterize, certify, transport, and permanently dispose of defense-generated transuranic waste (TRU).² AR, Tab A.1, RFP³ at 72; COS/MOL at 4. The majority of the work will be conducted at the WIPP Site, located approximately 32 miles from Carlsbad, New Mexico, and at various DOE waste generator sites. COS/MOL at 4.

The solicitation contemplated the award of a single cost-plus-award-fee (CPAF) management-and-operating (M&O) contract in accordance with Federal Acquisition Regulation (FAR) subpart 17.6 and DOE Acquisition Regulation (DEAR) part 917.6, with an indefinite-delivery, indefinite-quantity (IDIQ) contract line item number (CLIN) for the issuance of CPAF task orders. RFP at 1, 72. The RFP provided for award of a contract with a 4-year base period and six 12-month option periods. RFP at 1. The total estimated contract value, including all option periods, is \$3 billion. *Id.* The maximum value of the IDIQ CLIN is \$100,000,000. COS/MOL at 5.

The RFP advised that proposals would be evaluated on a best-value tradeoff basis, considering the following four factors, listed in descending order of importance: (1) key personnel, (2) past performance, (3) management approach, and (4) cost and fee. RFP at 395. The non-cost factors, when combined, were significantly more important than total evaluated cost. *Id.* The solicitation called for the submission of three volumes: volume I, offer and other documents requiring signature; volume II, technical and management proposal; and volume III, cost and fee proposal; in addition, it provided for oral interviews with each offeror’s proposed program manager and capital asset projects (CAP) manager. *Id.* at 336, 347-61. The RFP informed offerors that the evaluation of the program manager would be the most important aspect of the evaluation under the key personnel factor. *Id.* at 390.

DOE received proposals from five offerors, including Carlsbad and TBRS, by the August 3, 2021 due date for receipt of proposals. AR, Tab B.2, Source Selection Decision Document (SSDD) at 6; COS/MOL at 6. The table below summarizes the

² Transuranic waste is waste that contains manmade elements heavier than uranium on the periodic table. COS/MOL at 4, n.2.

³ Citations to the RFP are to the version conformed through RFP amendment 3, provided by the agency at Agency Report tab 3.

ratings assigned to Carlsbad's and TBRS's proposals and includes the offerors' evaluated costs:⁴

	CARLSBAD	TBRS
Key Personnel	Good	Outstanding
Past Performance	Satisfactory	Satisfactory
Management Approach	Satisfactory	Good
Evaluated Cost ⁵	\$143,765,392	\$153,051,019

AR, Tab B.2, SSDD at 3.

The Source Selection Authority (SSA) reviewed the final consensus report of the source evaluation board (SEB), viewed video recordings of the offerors' proposed program and CAP managers' oral interviews, met with the SEB as necessary, and ultimately concurred with the SEB's consensus evaluation ratings. *Id.* at 52-56. The SSA determined that TBRS's proposal was "technically superior" to all other proposals, with discriminators over Carlsbad's proposal under the most important evaluation factor, key personnel. *Id.* at 51, 53. The SSA rated the awardee's proposal "outstanding" under the key personnel factor, based on the assessment of a significant strength for the awardee's proposed program manager, which was the most important aspect of the key personnel evaluation; a significant strength for the CAP manager; and strengths for the awardee's four other key personnel. *Id.* The SSA rated Carlsbad's proposal "good" under the key personnel factor based on the assessment of a strength for its proposed program manager, a strength for the CAP manager, and strengths for three of its four other key personnel. *Id.* at 51.

The SSA found that the "most notable of TBRS'[s] advantages lie in its proposed" key personnel, explaining his belief that "the area of Key Personnel is fundamental to an Offeror's ability to successfully implement its overall proposed [technical approach]." *Id.* at 55. The SSA also found that "TBRS demonstrated a superior overall Management Approach," compared to Carlsbad, "after considering [Carlsbad's] Significant Weakness in the area of Contract Transition Approach," which the SSA found "is a significant risk to successful transition execution." *Id.* The SSA also noted that the "price difference between TBRS and [Carlsbad] is approximately \$10.6 [million], which results in a price premium of 6% for TBRS." *Id.* at 54. The SSA concluded, however, that TBRS's technical proposal "is superior to the [Carlsbad] proposal by a significant margin, and provides superior benefits which merit the higher price. *Id.* at 53.

DOE concluded that TBRS's proposal represented the best value to the agency and awarded the contract to TBRS. After requesting and receiving a debriefing on July 21,

⁴ Proposals were evaluated under the non-cost factors as outstanding, good, satisfactory, marginal, unsatisfactory, and neutral. AR, Tab B.1, Final SEB Report at 23-25.

⁵ Evaluated cost included total proposed cost and fee for the transition and first year of performance. AR, Tab B.2, SSDD at 3; RFP at 394.

2022, Carlsbad timely filed this protest with our Office. Protest, exh. B, Debriefing Slides at 1.

DISCUSSION

The protester raises numerous arguments challenging the agency's evaluation of the offerors' proposals under the key personnel, past performance, and management approach factors. For example, the protester contends that DOE unreasonably failed to assign strengths and significant strengths to its proposal under the key personnel and past performance factors. The protester also challenges a significant weakness assigned to its proposal under the management approach factor. In addition, the protester contends that the agency engaged in improper communications with the awardee concerning an agency-level protest filed prior to the closing date for receipt for proposals. Finally, the protester maintains that the best-value tradeoff was unreasonable because the agency improperly failed to perform a meaningful comparative assessment of the offerors' past performance and unreasonably determined that TBRs's higher-rated proposal was worth a cost premium. For the reasons discussed below, we find no basis to sustain the protest.⁶

The evaluation of an offeror's proposal is a matter within the agency's discretion. *National Gov't Servs., Inc.*, B-401063.2 *et al.*, Jan. 30, 2012, 2012 CPD ¶ 59 at 5. 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. *MicroTechnologies, LLC*, B-413091, B-413091.2, Aug. 11, 2016, 2016 CPD ¶ 219 at 4-5. Agencies must treat all offerors equally and evaluate their proposals evenhandedly against the solicitation's evaluation criteria. *Cubic Applications, Inc.*, B-411305, B-411305.2, July 9, 2015, 2015 CPD ¶ 218 at 7. A protester's disagreement with the agency's judgment in evaluating proposals or in its determination of the relative merit of competing proposals, without more, does not establish that the evaluation was unreasonable. *Veterans Evaluation Servs., Inc. et al.*, B-412940 *et al.*, July 13, 2016, 2016 CPD ¶ 185 at 8-9.

Key Personnel

Carlsbad challenges DOE's evaluation of its proposal under the key personnel factor. The protester argues that the agency should have assessed significant strengths, rather than strengths, for its program manager, CAP manager, and three other required key personnel. For the reasons discussed below, we find no merit to the protester's arguments.

As noted above, the solicitation provided that key personnel was the most important non-cost factor. RFP at 390. The RFP identified five positions as key, including as

⁶ Although we do not address all of the protester's arguments in this decision, we have considered them all and any not directly addressed in this decision are without merit.

relevant here, the program manager and CAP manager. The RFP instructed offerors to submit resumes for the candidates proposed for these positions. *Id.* at 390-391. The RFP advised that DOE would evaluate the resumes based on the “degree to which” the proposed individuals “are qualified and suitable for the proposed position in relation to the work for which they are proposed to perform and areas of responsibility.” *Id.* at 391. The solicitation further specified that, in evaluating a key person’s qualifications and suitability, the agency would evaluate experience and education. The RFP also recognized that “the number and functions of key personnel will be dependent on the organizational structure of the individual Offeror and the manner in which the Offeror proposes to perform the work.” *Id.* at 349. In addition, the RFP provided that DOE’s evaluation of the proposed program manager and CAP manager would include oral interviews to evaluate the “qualifications and suitability, including leadership capability for each proposed position as demonstrated during each oral interview.” *Id.* at 391.

Carlsbad’s Program Manager

In evaluating the protester’s proposal under the key personnel factor, the agency assessed Carlsbad’s proposal a strength for its proposed program manager after considering the “entirety of experience, education, references, and oral interview.”⁷ AR, Tab B.1, Final SEB Report at 30. In evaluating the program manager’s experience, DOE considered his former positions/work at the following companies: general manager, [DELETED]; associate director/deputy associate director, [DELETED]; and several senior-level positions at two other companies. *Id.* The agency also considered his two former positions working for DOE. In particular, the agency noted the proposed individual’s “leadership positions for [DELETED].” *Id.* DOE also explained that, after retiring from DOE, he became a “contractor leader in multiple roles which included serving in positions for a total of approximately five years at two different DOE facilities ([DELETED] and [DELETED]) very similar to the proposed Program Manager (PM) position for the WIPP M&O contract.” *Id.*

The SEB found that as general manager at [DELETED], the proposed individual “managed receipt of TRU waste from [DELETED], documentation and tracking of mixed TRU waste, sorting, removal of prohibited items, treatment of free liquids, packaging to meet WIPP Waste Acceptance Criteria (WAC) and disposal of remaining wastes at commercial facilities.” *Id.* The SEB explained that this work is “very similar to CCP work scope described” in the performance work statement (PWS). *Id.* Further, the SEB

⁷ DOE evaluated strengths, significant strengths, weaknesses, significant weaknesses, or deficiencies for key personnel. RFP at 413; Protest, exh. C, Proposal Evaluation Summary at 4; COS/MOL at 12; AR, Tab B.2, SSDD at 11-14. A “strength” was defined as “[a]n attribute in the proposal that increases the probability of successful contract performance.” Protest, exh. C, Proposal Evaluation Summary at 4. A “significant strength” was defined as “[a]n attribute that appreciably increases the probability of successful contract performance; a] number of strengths within a factor, when considered together based on the nature of the strengths, may constitute a significant strength.” *Id.*

determined that his experience managing [DELETED] operations is “very similar” to “management of surface and maintenance operations at WIPP,” as described in the PWS. *Id.* The SEB found that the proposed individual’s “work at [DELETED] as General Manager demonstrates experience required to perform the proposed PM position at WIPP.” *Id.*

In its evaluation, the SEB also discussed the program manager’s “very similar” experience as the associate director/deputy associate director with [DELETED]. *Id.* The SEB noted that in performing the work, he was “responsible for all major facility operations at [DELETED], including nuclear operations[.]” *Id.* The SEB also noted that his [DELETED] experience included responsibility for “waste packaging and transportation” and “for work in a highly regulated environment, including nuclear safety basis, criticality safety, fire protection and engineering services[.]” *Id.* The SEB determined that the very similar experience that the proposed individual “acquired at [DELETED] additionally demonstrates his ability to perform the Program Manager position for the WIPP M&O contract.” *Id.*

Ultimately, the SEB concluded that “[o]verall . . . [the program manager’s] resume demonstrated experience similar to the position for which he is proposed to perform and areas of responsibility.” AR, Tab B.1, Final SEB Report at 31. The SEB also found that, “[a]lthough [the program manager’s] experience included two positions very similar to the proposed position, the duration he served in those roles was only for a total of approximately five years at two sites ([DELETED]) in comparison to his entire career which spanned 41 years.” *Id.* The SEB found that “[t]his experience along with education, references, and oral interview . . . documents that he is qualified and suitable and is an attribute in the proposal that increases the probability of successful contract performance[,] and is therefore[,] a Strength.” *Id.*

The SSA agreed with the SEB’s evaluation of the strength, but noted that the proposed program manager “served more in executive, advisory roles over the length of his career than he did in a very similar or similar Program Manager roles at facilities in the field.” AR, Tab B.2, SSDD at 16. The SSA noted that the proposed program manager “did serve in two very similar Program Manager positions,” including one at the [DELETED], but found that he “held these two positions at least seven or more years ago.” *Id.* Further, the SSA found that the program manager’s “responses to the oral interview questions were more philosophical in nature than actionable.” *Id.* After reviewing the SEB findings regarding the program manager, the SSA concluded that while he was “qualified and suitable to perform in the role of Program Manager, [his] lack of recent very similar Program Manager experience in the field and oral interview results represent some limited risk to successful contract performance.” *Id.*

The protester argues that it should have received a “significant strength,” rather than a “strength” for its proposed program manager. In support of this position, the protester points to twelve instances where the SEB noted positive attributes of its proposed program manager. Comments at 5-6; see, e.g., AR, Tab B.1, Final SEB Report at 113-114 (determining the program manager’s work as a general manager “managing TRU waste operations” demonstrates “experience required to perform the proposed

[program manager] position at WIPP.”); *id.* (finding the program manager’s “leadership to shift to a performance-based culture” to be a “positive attribute”); *id.* (determining that his work in “senior-level positions” in which he “directed strategic planning for the \$10 billion [DELETED] project and initiated closure-focused operations, transitioning the sites and their [DELETED] workforce from a [DELETED] corporation to a contractor-operated model,” was a “positive attribute” because it “demonstrates leading organizational cultural change to likely improve contract performance.”). Carlsbad maintains that the “volume of positive attributes” included in the SEB’s discussion of its program manager should “certainly qualify as ‘a number of strengths within a factor,’” which the protester asserts, “fits the definition of a [s]ignificant [s]trength.” Accordingly, the protester argues, its proposal should have been assigned a significant strength for its program manager. Comments at 6.

DOE responds that the SEB’s multiple comments regarding the protester’s program manager reflect several aspects of the program manager’s experience and qualifications, which contributed to the SEB’s overall rating of a strength.

Based on this record, we find nothing unreasonable regarding DOE’s evaluation. As noted above, the agency assessed Carlsbad’s proposal a strength under the key personnel factor based on the program manager’s demonstrated experience, which the SEB found was “very similar” to the areas of responsibility of the position for which he was proposed. AR, Tab B.1, Final SEB Report at 104. The agency concluded that this experience along with the program manager’s education, references and oral interview, demonstrated that he is “qualified and suitable and is an attribute in the proposal that increases the probability of successful contract performance and is therefore a Strength.” *Id.* The SEB then pointed to aspects of the program manager’s experience and qualifications as support for the strength. *Id.* at 103-104. Although the protester asserts that the aspects noted by the agency should be assessed as separate strengths, such that when considered together, they constitute a significant strength, the protester has not demonstrated that the aspects discussed each provide an additional benefit to the agency or otherwise independently meet the standard for a strength, *i.e.*, an attribute in the proposal that increases the probability of successful contract performance. It is not unreasonable for an agency to conclude that not every positive feature of a proposal identified in its evaluation represents a separate strength. See *22nd Century Techs., Inc.*, B-420510, B-420510.2, May 4, 2022, 2022 CPD ¶ 127 at 4. Here, the protester simply disagrees with the agency as to the merit of its proposed approach, and the appropriate rating or characterization of its proposal. Such disagreement, without more, does not provide a basis for us to conclude that an evaluation was unreasonable.⁸ *Veterans Evaluation Servs., supra.*

⁸ The protester also asserts that the agency evaluated Carlsbad’s and the awardee’s program managers unequally. Although the protester points to the experience of its program manager, which in its view, should have received more credit or been found equal to the experience of the awardee’s program manager, the protester has not demonstrated that the difference in ratings did not stem from differences in experience. *INDUS Tech., Inc.*, B 411702 *et al.*, Sept. 29, 2015, 2015 CPD ¶ 304 at 6 (Where a

Carlsbad's Other Key Personnel

Similarly, we find no merit to the protester's challenge to the agency's evaluation of its four other required key personnel. The protester makes essentially the same argument for each--the SEB assigned a strength based on multiple positive attributes, which in the protester's view, should have merited a significant strength. For example, the protester claims that its CAP manager warranted a significant strength instead of a strength and that the agency's "own observations as to [his] qualifications demonstrate that [the] assignment of a 'significant strength' was warranted." Protest at 31, quoting AR, Tab B.1, SEB Final Report at 104-105 (finding the proposed individual's experience "managing integrated project teams and integrating with multiple laboratory programs for the construction of large line-item capital asset projects" as a positive attribute because it demonstrates that he is "currently executing large capital asset project work associated with the [DELETED] that is relatable to the WIPP Safety Significant Confinement Ventilation System (SSCVS) project" defined in the PWS); (finding the proposed individual's experience with the "[DELETED]" to be a positive attribute because it demonstrates that he "is capable of managing multiple projects that are critical to the mission of a nuclear facility which has direct application to WIPP," as described in the PWS).

The protester maintains, however, that DOE's evaluation "fails to acknowledge the diversity of work and ability to work successfully at equally if not more complex DOE project sites in New Mexico, similar clients, project teams, subcontractors, work scopes, requirements, and regulatory agencies to accomplish work as demonstrated on projects presented of comparable or greater complexity to WIPP." Protest at 32. The protester asserts that "[s]uch work experience appreciably increases the probability of successful contract performance" and should have been rated as a "Significant Strength." *Id.*

Based on our review, we cannot conclude that the agency's evaluation of a strength, instead of a significant strength for Carlsbad's proposed CAP manager was unreasonable. The record shows that the agency conducted a thorough and detailed evaluation of the proposed individual's qualifications--including consideration of every aspect of the CAP manager's experience highlighted by the protester--but concluded that his qualifications did not rise to the level of a significant strength. The protester's argument essentially repeats the agency's own findings and claims these findings should have resulted in a significant strength. Such disagreement with the agency's evaluation, however, without more, is not sufficient to render the evaluation unreasonable. *Veterans Evaluation Servs., supra.*

Past Performance

Carlsbad raises numerous challenges to the agency's past performance evaluation, arguing that its proposal should have received a rating higher than "satisfactory" for past

protester alleges disparate treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the offerors' proposals.) As such, this protest ground is denied.

performance, and the awardee's proposal should have been rated lower. We find no merit to the protester's arguments. We discuss two representative arguments below.

For the past performance evaluation, the solicitation provided the agency would evaluate each offeror based on the agency's assessment of recent and relevant past performance information. RFP at 391. With regard to recency, the RFP provided that DOE will evaluate contracts that are currently being performed or have a period of performance end date within the last four years from the original solicitation issuance date. *Id.* at 392. As for relevance, the agency would consider size, scope, and complexity to determine whether submitted reference contracts were relevant to the portion of the PWS that each entity is proposed to perform. *Id.* at 391.

The RFP defined scope, size, and complexity as follows: scope is the "type of work (e.g., work as identified in the PWS [excluding Section C.8.0], including similar work of a non-nuclear nature and/or similar non-DOE work);" size is the "dollar value (approximate average annual value in relation to the proposed work; annual contract value of approximately \$200 [million] for evaluation purposes);" and complexity is the "performance challenges (e.g., prior innovations, work performance improvements, subcontractor management, etc.)." *Id.* The solicitation explained that "[t]he higher the degree of relevance of the work, the greater the consideration that may be given." *Id.* at 391-392.

Carlsbad's Past Performance

The protester argues that DOE misevaluated the size of several contracts, leading the agency to assign an unreasonably low past performance rating. For example, Carlsbad complains that the agency unreasonably determined that a contract submitted as a reference for one of its team members--the [DELETED] contract, which concerned work at the [DELETED]--was merely "similar," as opposed to "very similar," to the work the team member would perform on the instant contract. Protest at 40. The protester alleges that the agency improperly "evaluated size against the contract instead of 'the entirety of the commercial facility operation.'" Protest at 39-42; Supp. Protest at 12-13. The protester maintains that had the agency properly evaluated the size of this project, its proposal would have received an overall rating of "good" or "outstanding" for past performance, rather than "satisfactory." Comments at 21.

As relevant here, Carlsbad's proposal identified the value of the work for its [DELETED] contract, which was a contract for the Department of Energy, National Nuclear Security Administration (NNSA), as "\$425 [million] (total); \$47.2 [million] (annual), representative of a \$500 [million]/year commercial facility operation." AR, Tab D.1, Carlsbad Tech. Proposal at 58.

The SEB determined that the annual value of the [DELETED] contract was "less than the average annual value of \$113 [million] for WIPP M&O." AR, Tab B.1, Final SEB Report at 419. The agency explains in response to the protest that the SEB based its determination on the reported "total" and "annual" amount values of \$425 million and \$47.2 million, respectively, identified by Carlsbad in its proposal. COS/MOL at 32. The

SEB also evaluated the scope and complexity of the [DELETED] contract, and found both to be “similar” to that in the instant contract. These findings resulted in an overall determination that this contract was “relevant,” which led the agency to evaluate this contract for the quality of the work performance. AR, Tab B.1, Final SEB Report at 419.

The protester alleges instead that the agency should have evaluated the size of the [DELETED] contract (*i.e.*, the dollar value) based on a comparison to the \$500 million per year plant operation amount. Comments at 22. In support of this argument, the protester points to the following language in the “Past Performance Reference Information Form,” provided with the RFP as attachment L-3: “If the reference contract is for the operation and/or demolition of a commercial facility, the L-3 form may be utilized to reflect the entirety of the commercial facility operation along with a single point of contact for the contract or binding agreement with the largest single client for the referenced services performed.” RFP at 370. As noted above, the [DELETED] contract was awarded by DOE, NNSA, and the contract was performed by Carlsbad’s team member at its “[DELETED].” AR, Tab D.1, Carlsbad Tech. Proposal at 59. Because the work was performed at a commercial facility, the protester claims that the agency should have followed the RFP language, quoted above, that “[i]f the reference contract is for the operation and/or demolition of a commercial facility, [then] the L-3 form may be utilized to reflect the entirety of the commercial facility operation.” RFP at 370. The protester argues that despite this language, DOE evaluated size against the contract instead of the entirety of the commercial facility operation. Comments at 22.

Based on our review, we find nothing unreasonable regarding the agency’s evaluation. As noted above, the RFP provided that the agency’s evaluation of size is the “dollar value (approximate average annual value in relation to the proposed work; annual contract value of approximately \$200 [million] for evaluation purposes)[.]” RFP at 391-92. As the record shows, Carlsbad’s proposal indicated that the value of the work for the [DELETED] contract was \$425M (total) and \$47.2M (annual). RFP at 370; AR, Tab D.1, Carlsbad Tech. Proposal at 58. The record also shows that the agency’s evaluation of size was based on the contract value that Carlsbad itself provided in the L-3 form in the field provided for the “contract total value and approximate average annual value”--*i.e.*, \$47.2 million per year and \$425 million total. AR, Tab D.1, Carlsbad Tech. Proposal at 58.

Although Carlsbad’s proposal also stated that the contract value is “representative of a \$500M/year commercial facility operation,” the protester does not cite to any provision in the solicitation that required the agency to evaluate, even in instances involving the operation of a commercial facility, whether an effort was relevant in terms of size by comparing the value of the WIPP contract to the value of the entire facility/operations at which an offeror may have performed a past effort.⁹ RFP at 370. Rather, as noted above, the solicitation advised that “[i]f the reference contract is for the operation and/or demolition of a commercial facility, the L-3 form may be utilized to reflect the entirety of the commercial facility operation along with a single point of contact for the contract or

⁹ The proposal also provided that the CFFF has “an annual budget of \$500 million[.]” AR, Tab D.1, Carlsbad Tech. Proposal at 59.

binding agreement with the largest single client for the referenced services performed.”). Further, other than pointing to the fact that its proposal also included a “representative” contract value for a commercial facility, the protester makes no arguments as to why the agency’s evaluation of size based on the actual contract value was unreasonable. To the extent the protester asserts that the agency should have instead relied upon the “representative” value to evaluate size, the protester’s disagreement, without more, fails to demonstrate that the agency’s evaluation was unreasonable.

Awardee’s Past Performance

Among its challenges to the evaluation of the awardee’s past performance, the protester asserts that TBRs’s past performance rating should have been lower due to the experience of its team member as part of a different team of contractors--the Los Alamos National Security, LLC (LANS)--at the Los Alamos National Laboratory (LANL). Protest at 48-50; Supp. Protest at 15-16. The protester asserts that the agency failed to consider the effort because it determined incorrectly that the effort was “not relevant” to the WIPP contract.

TBRs identified the LANL programs in RFP attachment L-7, List of DOE Contracts, in which offerors were required to identify all DOE prime contracts currently being performed and/or with a period of performance end date within the four years preceding the original solicitation issuance date. RFP at 315; AR, Tab C.1, TBRs Tech. Proposal at 91-92. TBRs described the LANL contract as involving management and operation of the laboratory, including defense and security-related research. AR, Tab C.1, TBRs Tech. Proposal at 91 (providing the “contract description” as “Management and operation of Los Alamos National Laboratory (LANL), which helps [to] maintain the safety, security, and effectiveness of the U.S. nuclear stockpile” and also “conducts research for new defense programs as well as for a wide range of global security missions.”).

DOE considered and documented its analysis of the relevancy of each past performance contract reference provided. For the LANL contract, which had a \$[DELETED] billion contract value, the agency determined that although “[t]he contract has greater size” than the WIPP contract, it nonetheless was “not relevant” because “the national security laboratory scope and complexity is fundamentally different than the WIPP M&O [contract] and has only some similarity to the entire scope of the WIPP M&O contract for which [the company] is proposed to be responsible.” AR, Tab B.5, Relevancy Evaluation for DOE Contracts at 3.

The protester disagrees with the agency’s assessment that the contract scope of the LANL contract was not similar. In support of this argument, the protester points to the North American Industry Classification System (NAICS) code for the LANL contract, which was 561210 (Facilities Support Services), and that for the WIPP contract, which is 562211 (Hazardous Waste Treatment and Disposal). Comments at 40. The protester asserts that, although the NAICS codes are different, the LANL effort must be relevant because they fall under “the same industry sector” of the NAICS codes. *Id.* Other than this general statement, however, the protester provides no factual or legal

basis for this comparison or its argument. Supp. Protest at 16. The protester has failed to demonstrate how similarity in NAICS codes means that the awardee's team member's work on the LANL contract is similar to the work it is proposed to perform on the WIPP contract, or otherwise undermines the agency's relevancy assessment. As such, we find the protester's argument provides no basis to sustain the protest.

The protester further challenges the agency's evaluation of the awardee's past performance with regard to the LANL contract, pointing to a 2016 news article and 2014 DOE Inspector General (IG) Alert. Based on these sources, the protester alleges that "[d]uring the course of that prior performance [at LANL,] LANSI[s] protocols and actions led to a radiological release[.]" Protest at 48-51; Supp. Protest at 15. The protester maintains that the incident, which is known by DOE, should have reflected poorly on TBRS's team member and negatively impacted TBRS's ratings under all of the evaluation factors, including past performance.¹⁰ Protest at 48; Supp. Protest at 15-16.

The agency responds that the 2014 incident is outside of the relevant time period prescribed by the RFP for this factor; thus, consideration of the incident would have been improper. COS/MOL at 54. As relevant here, the RFP provided that "DOE will evaluate recent past performance information for contracts that are currently being performed or have a period of performance end date within the last four (4) years from the original solicitation issuance date." RFP at 392. The solicitation further advised that "[t]o the extent that performance evaluations are divisible, the Government will only evaluate performance that occurred within the four (4) year period preceding the original solicitation issuance date. *Id.*

¹⁰ To the extent the protester argues that this incident should have resulted in a lower evaluation rating for TBRS's proposal under the key personnel factor or management factor, we find the protester's arguments unavailing. For example, with regard to evaluation of management approach, the protester alleges that "to the extent TBRS proposed using its principals' past technical approach and protocols" that led to any issues at LANL, that should have resulted in a lower rating. Protest at 50. In this regard, the protester asserts that "performance risk" was to be considered in conjunction with the management approach factor and alludes to DOE's "definitions of strengths, weaknesses, and deficiencies." *Id.* The protester also speculates that the team member/TBRS may be using deficient "past technical approach and protocols" or otherwise be using new and "untested" protocols that should have resulted in DOE determining that its proposal posed certain risks. *Id.*

The RFP provided that "risk" as mentioned under Table III-1 (Strength/Weakness/Deficiency Definitions) and Table III-2 (Adjectival Ratings (Non-Past Performance)) meant risks that are related to the contents of the offeror's submitted proposal. See AR, Tab B.1, Final SEB Report at 22-23. The record reflects that the SEB and SSA thoroughly reviewed TBRS's management approach and found no such deficiencies. Further, even after the protester received a copy of TBRS's technical proposal under the protective order, the protester has failed to identify any specific management approaches in TBRS's proposal that it challenges or that relate in any way to LANL. See *generally* Supp. Protest.

Based on our review, we agree with the agency that, per the solicitation terms, it could not consider the 2014 incident as part of the past performance evaluation. Although TBRS's proposal identified its team member's involvement with the LANL contract--which as discussed above, the agency found was "not relevant" because it was not similar in scope--the record reflects that the radiological release incident occurred in 2014 and any performance by the team member that may have been related to such an incident was outside of the scope of the RFP's relevant, recent past performance.

Further, the agency maintains that the 2014 incident cannot be imputed to the TBRS team member, noting that the IG Alert relied on by the protester discusses "deficiencies in LANL's procedures" that "may have contributed to the radiological event." Protest at 49. As the agency points out, the IG Alert neither mentions the team member specifically, nor states that LANS was actually responsible for the incident. COS/MOL at 54; Protest at 49. Rather, the IG Alert states that the agency has not made a definitive determination about the direct cause of the incident. *Id.*

In sum, we find that the agency's evaluation of TBRS's past performance was reasonable.

Management Approach Factor

The protester also challenges the agency's evaluation under the management approach factor. Carlsbad's primary complaint is that DOE improperly assigned its proposal a significant weakness for proposing to provisionally adopt critical procedures as part of its contract transition approach.¹¹ Protest at 42-47; Supp. Protest at 13-14.

The management approach evaluation criteria provided for the analysis of five factors: (1) transition approach, (2) defined benefit pension and post-retirement benefits, (3) management approach, (4) small business participation, and (5) inclusion of improvements to work processes, procedures, and technologies. RFP at 393-94.

¹¹ The protester also asserts that the agency should have assigned additional significant strengths and strengths to its proposal for its management approach. For example, the protester claims that its two strengths should have been significant strengths because, according to the protester, each strength "was a combination of several separate and distinct strengths within the factor." Protest at 45-46. The protester points to the definition of "significant strength" which as discussed above, afforded the agency discretion to assign a significant strength if there are multiple strengths within a factor. *Id.* As also discussed previously with regard to a similar argument advanced by the protester concerning the evaluation of its key personnel, the solicitation definition does not mandate the assignment of a significant strength. The protester has failed to explain why it was unreasonable for DOE to assign a strength or demonstrate that, aside from the multiple findings, they conferred a sufficient benefit to the government to warrant a significant strength. As noted previously, it is not unreasonable for an agency to conclude that not every positive feature of a proposal identified in its evaluation represents a separate strength. See *22nd Century Techs., supra*. We find the protester's argument fails to provide a basis to sustain the protest.

As part of Carlsbad's transition approach, its proposal discussed Carlsbad's approach to review existing plans, procedures, and associated training/qualifications programs pending "formal review." AR, Tab D. 1, Carlsbad Tech. Proposal at 165. In particular, Carlsbad proposed to identify which procedures were "contractually compliant" versus "non-compliant" and that, for those that were non-compliant but critical, Carlsbad would "provisionally adopt" them for up to 90 days.

Plans and Procedures. [Carlsbad] intends to [DELETED].

AR, Tab D. 1, Carlsbad Tech. Proposal at 165.

The SEB assigned Carlsbad's proposal a significant weakness, finding Carlsbad's approach of "accepting non-compliant critical documents from the incumbent while proceeding with contract execution to be an unacceptable approach" because "it is contrary to contract requirements for the contractor to ensure that all applicable laws, regulations, orders, etc. are followed on day one of contract execution." AR, Tab B.1, Final SEB Report at 385.

The protester asserts that the agency's evaluation was unreasonable because its "blue sheeting process" would have "restricted [the procedures] for use only where they can be used in compliance with the contract." Protest at 43. As support for this argument, the protester cites another part of its proposal, which addressed "compliance reviews during blue sheet due diligence," stating: "We construct a compliance matrix based on CFR [code of federal regulations] requirements, confirming all topics are procedurally addressed. Already DOE-approved, we adopt and flag overly complex procedures for further assessment." AR, Tab D.1, Carlsbad Tech. Proposal at 175.

Based on our review, we find nothing unreasonable regarding the agency's evaluation. The record reflects that the protester's explanation--that its blue sheeting process would have restricted the procedures for use only where they can be used in compliance with the contract--is not provided anywhere in Carlsbad's proposal. AR, Tab D.1, Carlsbad Tech. Proposal at 165. Further, the separate, unrelated section to which the protester cites also fails to support the protester's position. See Protest at 43 (citing Tab D.1, Carlsbad Tech. Proposal at 175). The cited part of Carlsbad's proposal discusses only "[c]ompliance reviews [performed] during blue sheet due diligence," and suggests only that the protester would "adopt and flag overly complex procedures for further assessment." AR, Tab D.1, Carlsbad Tech. Proposal at 175. Carlsbad's proposal makes no mention of how Carlsbad would handle "non-compliant critical" procedures or avoid using or relying upon those "non-compliant critical" procedures, despite "provisionally adopt[ing]" them. *Id.* at 165.

It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information that clearly demonstrates compliance with the solicitation requirements and allows for meaningful review. *MIG Constr. Partners*, B-419818.4, B-419818.9, May 24, 2022, 2022 CPD ¶ 120 at 5. Here, the agency had no obligation to infer a process that Carlsbad did not describe in its proposal, especially not where that inference would directly contradict the practice Carlsbad actually described in its proposal to "provisionally adopt" non-compliant critical procedures. See *Loyal Source Gov't Servs., LLC*, B-420759, B-420759.6, Aug. 17, 2022, 2022 CPD ¶ 213 at 9 (denying challenge to

significant weakness where proposal did not fully explain the proposed approach, noting “DHS [Department of Homeland Security] was not required to infer elements of the contract management plan that [the offeror] omitted”). Further, to the extent the protester asserts that this issue failed to create a risk that would warrant a significant weakness, as noted above, the agency explained in assigning the significant weakness that Carlsbad proposed an “unacceptable approach.” AR, Tab B.1, Final SEB Report at 385. The protester’s disagreement with the evaluation, without more, is not sufficient to render the evaluation unreasonable.

Improper Communications

The protester argues that DOE improperly “engaged in communications with TBRS regarding Amendment 0002” in connection with “an agency level protest filed by TBRS.” Protest at 51; Supp. Protest at 17. The protester also contends that the agency’s communications with TBRS are not sufficiently documented.

As relevant here, Bechtel National, Inc. (BNI), a member company of the awardee, filed an agency-level protest with DOE as a prospective offeror. Its protest concerned provision M.3(h) of the original solicitation and was filed on July 1, 2021, prior to the due date for receipt for proposals.¹² See AR, Tab E.1, Communications Relating to Amend. 0002 at 1-9 (providing communications regarding RFP amendment 0002, including the agency-level protest); COS/MOL at 62.

The agency explains in response to the protest that all “communications with BNI were solely in relation to [the] preaward protest.” COS/MOL at 63. These included: the pre-award protest itself, three telephone calls between DOE and BNI counsel, and an August 2, 2022 letter from BNI to DOE upon issuance of RFP amendment 0002 (which addressed BNI’s concern) notifying DOE that it was withdrawing its protest as its concerns were addressed by the modified solicitation language. AR, Tab E.1, Amend. 0002 Communications at 10, attach. 1, Decl. of DOE Official.

Based on our review, we find nothing improper regarding the agency’s communications with BNI regarding its pre-award protest. As relevant here, FAR section 33.103(g), addressing agency-level protests, expressly allows agencies to communicate with protesters about protests. FAR 33.103(g); see also DEAR 933.103 (“The Department of Energy encourages direct negotiations between an offeror and the contracting officer in an attempt to resolve protests.”). The record reflects that this is what happened here.

¹² BNI’s agency-level protest objected to language in RFP section M.3(h), which provided that “DOE may consider any other information determined to be reasonably predictive of the quality of the Offeror’s performance under this proposed contract, such as information bearing on the Offeror’s integrity and business ethics.” AR, Tab E.1, Amendment 0002 Communications at 10. The protester alleged that this language was ambiguous and could result in the evaluation of “information that is not relevant to performance of relevant contracts to be considered as part of the past performance evaluation.” *Id.* In response, the agency issued amendment 0002 to the solicitation, which deleted the above-quoted sentence. RFP at 393 (amendment 00002).

In particular, the record shows that the communications between TBRS and DOE were limited to the substantive issues raised in the agency protest, and the procedural formalities of TBRS withdrawing the protest after the agency addressed its concerns. See AR, Tab E.1, Amend. 0002 Communications at 10, attach. 1, Decl. of DOE Official.

While the protester asserts that “communications with one offeror to the exclusion of others regarding the Solicitation is inherently unfair,” Protest at 51, the protester cites no evidence to suggest that the communication was improper or involved any communications that are not expressly permitted under the FAR’s agency-level protest procedures. In this instance, we find nothing to suggest that there was anything improper with the agency having pre-proposal communications regarding an agency-level pre-award protest--particularly not where the protest raised valid issues that resulted in the agency voluntarily taking corrective action and amending the solicitation. This protest ground is denied.¹³

Best-Value Tradeoff Determination

Finally, the protester challenges DOE’s best-value tradeoff. The protester’s primary argument is that the tradeoff was based on a flawed key personnel, past performance, and management approach evaluation, as discussed above. Protest at 43-44. Because we find no merit to the protester’s challenges to the agency’s evaluation of proposals, we see no basis to sustain the protester’s derivative challenge to the agency’s best-value decision. *Allied Tech. Grp., Inc.*, B-412434, B-412434.2, Feb. 10, 2016, 2016 CPD ¶ 74 at 10.

We also find unavailing the protester’s assertion that in conducting the tradeoff analysis, the agency failed to perform a meaningful comparative assessment of the offerors’ past performance and unreasonably determined that TBRS’s higher-rated proposal was worth paying a modest cost premium. Protest at 53; Supp. Protest at 18.

Our Office reviews source selection official tradeoff decisions for rationality and consistency with the evaluation criteria. *Crowder Constr. Co.*, B-411928, Oct. 8, 2015, 2015 CPD ¶ 313 at 10. In negotiated procurements, GAO has consistently stated that source selection officials have broad discretion in determining how they will use technical and cost evaluation results, and the manner and extent to which they make cost/technical tradeoffs. *Id.* Where a cost/technical tradeoff is made, GAO examines whether the source selection decision was documented, and whether that

¹³ To the extent the protester argues that the record demonstrates that the agency’s conduct during the communications is unreasonable because the agency relies, in part, on a post-protest declaration to support its rebuttal of the protester’s arguments, rather than contemporaneous documentation, we disagree. Comments at 41-42. The protester cites no legal authority to support its conclusion that declarations are somehow inherently unreliable. And specifically here, the agency record regarding the agency-level protest and RFP amendment 0002 is buttressed by the declaration of an agency official, who is presumed to act in good faith. See *Silynx Communications, Inc.*, B-310667, B-310667.2, Jan. 23, 2008, 2008 CPD ¶ 36 at 8. Carlsbad presents no argument or evidence to question the veracity of the agency official’s statements.

documentation included rationale for tradeoffs made, and the benefits associated with additional costs. *Id.*; FAR 15.308. An agency may properly select a more highly rated proposal over a lower cost one where it has reasonably concluded that the technical superiority outweighs the difference in cost. See *Deloitte Consulting, LLP*, B-419336.2 *et al.*, Jan. 21, 2021, 2021 CPD ¶ 58 at 14-15.

Here, the SSA's comparative analysis of the proposals and tradeoff decision were rational, consistent with the evaluation criteria, and well-documented. The record reflects that the SSA performed a detailed comparative analysis for each RFP factor among the offerors, noting the important discriminators in his discussion. See Tab B.2, SSDD at 11-56. The SSA acknowledged the RFP's preference for a superior technical proposal over an award based simply on the lowest price, but also noted that DOE would not make an award at a price premium found to be disproportionate to the benefits received by the Agency. *Id.* at 8-10, 53. The SSA performed an extensive trade-off between TBRS's and Carlsbad's proposals, including with regard to past performance, and found discriminators in favor of TBRS for both key personnel and management approach. *Id.* at 53-55. With regard to past performance, the SSA determined that there were "minimal discriminators between TBRS and [Carlsbad]" that would "affect the final selection decision" and thus found "[Carlsbad] and TBRS to be relatively equivalent" for this factor. The SSA also noted that the "price difference between TBRS and [Carlsbad] is approximately \$10.6M, which results in a price premium of 6% for TBRS." *Id.* The SSA concluded, however, that TBRS's technical proposal "is superior to the [Carlsbad] proposal by a significant margin, and provides superior benefits which merit the higher price." *Id.*

As noted above, the protester asserts that the agency's tradeoff failed to include a meaningful comparative assessment of the offerors' past performance and unreasonably determined that TBRS's higher-rated proposal was worth paying a modest price premium. Based on our review of the record, we do not agree that the SSA failed to conduct a comparative assessment of the offerors' past performance or disregarded cost in the source selection. Rather, as discussed in detail above, the record reflects that the SSA considered Carlsbad's lower proposed cost, but determined that TBRS's proposal was the best value to the government. In sum, although Carlsbad disagrees with the agency's evaluation, the record demonstrates that at every step in the procurement, the agency considered all of the information submitted by the offerors and available to the agency, and issued well-reasoned and rational evaluation reports before making a best-value tradeoff that highlighted key discriminators between these proposals.

The protest is denied.

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