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Decision

Matter of: Booz Allen Hamilton, Inc.

File: B-421252.3; B-421252.5

Date: May 19, 2023

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DIGEST

1. Protest that the agency violated regulation by declining to open discussions after corrective action is dismissed as untimely when the same alleged legal error existed prior to the corrective action, and the protester failed to raise the issue at that time.

2. Protest alleging that the agency misevaluated proposals and made an unreasonable source selection decision is denied where the record shows that the agency's evaluation was reasonable and consistent with the terms of the solicitation.

DECISION

Booz Allen Hamilton (BAH), Inc., of McLean, Virginia, protests the award of a contract to CACI, Inc.-Federal, of Chantilly, Virginia, under request for proposals (RFP) H98230-22-R-0002, which was issued by the National Security Agency for network and exploitation analyst services. The protester alleges that the agency erred by failing to conduct discussions, and unreasonably evaluated proposals in numerous respects.

We deny the protest.

BACKGROUND

On February 14, 2022, the agency issued the RFP, which contemplated the award of a single indefinite-delivery, indefinite-quantity, cost-plus-award-fee level of effort and completion contract with a 1-year base ordering period, and four 1-year option periods. Agency Report (AR), Tab 3, RFP at 30, 35, 40, 45, 98. The RFP provided that award would be made to the proposal that represented the best-value to the government on the basis of four evaluation factors: (1) management; (2) ability to staff; (3) small business participation; and (4) cost. *Id.* at 107-108; AR, Tab 19, Proposal Evaluation Criteria (PEC) at 4. The solicitation provided that management and ability to staff, when combined, were significantly more important than cost, and that the small business participation factor would be evaluated only on an acceptable/unacceptable basis. *Id.* at 7. Additionally, the solicitation explained that the agency intended to award without discussions, but reserved the right to enter into discussions if necessary. RFP at 108.

Relevant to this protest, the PEC provided that the agency would evaluate management proposals to determine the offeror's ability to efficiently, effectively and successfully manage the requirements of the statement of work (SOW), and to determine the offeror's ability to integrate mission knowledge into the proposed management approach and processes. AR, Tab 19, PEC at 8. However, the solicitation further explained that this evaluation would focus on the evaluation of three subfactors: program management; talent management; and mission essential services plan. *Id.* at 8-9

Of note, the solicitation provided detailed evaluation criteria that would guide the evaluation of each of the subfactors, including cross references to specific sections of the proposal preparation instructions (PPI). See *id.* For example, the solicitation explained that the talent management subfactor would be evaluated on the basis of four equally-weighted criteria, framed as questions to be answered with respect to a proposal:

3.2.1 To what extent does the Offeror's approach describe an effective and efficient recruiting method and process to ensure full staffing throughout the contract?

3.2.2 To what extent does the Offeror's approach describe an effective and efficient retention method and process to ensure full staffing throughout the contract?

3.2.3 To what extent does the Offeror provide new equivalencies to add to the [solicitation's] Equivalency List to better align personnel effectively and efficiently to requirements?

3.2.4 To what extent does the Offeror plan for maintaining personnel qualifications, certifications, and skills that result in a trained and qualified workforce?

Id. at 9 (internal portion markings and cross-references omitted).

Also relevant to this protest, the solicitation included an appendix (referred to as appendix B) that described functional labor categories for staff to be provided under the effort, as well as minimum qualifications for each of those labor categories. AR, Tab 8, Appendix B, Labor Category Description. For example, appendix B explained the duties and capabilities expected of a “Program Manager (PM) Skill Level 2”, and outlined specific qualifications such as: 10 years of relevant experience; knowledge of the Federal Acquisition Regulation (FAR) and other enumerated regulations; and various program management certifications. *Id.* at 3-4. The solicitation further explained that these qualifications would be evaluated as part of the agency’s cost evaluation. Specifically, the RFP provides that an offeror’s cost proposal will be evaluated to ensure “the proposed labor resources meet the capabilities/qualifications of the labor categories specified in the SOW.” AR, Tab 19, PEC at 11; *see also* Tab 18, PPI at 16-17 (requiring cost proposals to include prime and subcontractor self-certifications that the proposed labor basis represents the “direct labor cost necessary to provide labor resources to align with all of the applicable Government labor categories within Appendix B of the SOW at the rates proposed, and meet or exceed all of the capabilities, qualifications, and specialized requirements listed for each applicable Government labor category within Appendix B of the SOW”).

Additionally, a separate appendix provided several “equivalencies,” or alternative sets of qualifications, that would permit individuals who possessed relevant skills or experience but otherwise lacked specific qualifications to be considered for various positions. AR, Tab 9, Appendix D, Equivalency List. The appendix explained that offerors were invited to propose additional equivalencies or modify the existing ones, and the PEC further provided that offerors would specifically be evaluated on the extent to which they proposed new equivalencies to better align personnel effectively and efficiently to requirements. *Id.* at 2; AR, Tab 19, PEC at 9.

On March 30, 2022, the agency received several proposals, including proposals from CACI and BAH. Memorandum of Law (MOL) at 4. Following an initial evaluation, the agency made award to CACI on October 12, and BAH subsequently filed a protest of the agency’s award decision with our Office. *Id.* On November 8, the agency indicated that it intended to take corrective action by reevaluating proposals, and we subsequently dismissed as academic BAH’s protest, as well as the protest of another disappointed offeror. *Leidos, Inc., Booz Allen Hamilton, Inc.*, B-421252.1, B-421252.2, Nov. 14, 2022 (unpublished decision).

The agency reevaluated proposals, and CACI and BAH were evaluated as follows:

	BAH	CACI
MANAGEMENT APPROACH	Good	Good
ABILITY TO STAFF	Outstanding	Outstanding
SMALL BUSINESS PARTICIPATION	Acceptable	Acceptable
PROBABLE COST	\$2,734,298,357	\$2,490,747,403

AR, Tab 83, Source Selection Decision (SSD) at 5.

In comparing the proposals, the agency concluded that, while BAH and CACI were both rated “good” with respect to the management approach factor, there were substantive differences between the two proposals that favored CACI. *Id.* at 7-8. Specifically, the agency expressed concerns related to several areas of BAH’s management proposal including the fact that the number of functional leads was not proportionate to the underlying labor categories, and a lack of detail concerning certain aspects of recruitment. *Id.* By contrast, the agency identified strengths and only minor concerns in CACI’s management proposal. *Id.* Additionally, the cost evaluators identified three cost findings with respect to BAH’s proposal and made an upward adjustment of \$48,836,605 based on the risks identified. *Id.* at 10.

Based on these findings, the source selection authority concluded that, while BAH and CACI were substantively equal with respect to their ability to staff proposals, CACI was superior with respect to the management factor. AR, Tab 83, SSD at 11. Moreover, BAH’s probable cost was 9.8 percent (or \$243,550,954) greater than CACI’s probable cost. *Id.* Because CACI’s proposal was both technically superior and proposed a lower cost, the agency concluded CACI presented the best value to the government and made award to CACI. *Id.* This protest followed.¹

DISCUSSION

The protester challenges the agency’s evaluation and conduct of the procurement in several respects. First, the protester challenges the agency’s decision not to open discussions as contrary to the requirements of Defense Federal Acquisition Regulation Supplement (DFARS) section 215.306(c). Protest at 95-100. Second, the protester alleges that the agency deviated from the solicitation requirements primarily by failing to consider several mandatory SOW requirements in evaluating management proposals. *Id.* at 29-45. Third, the protester argues that the agency erred in its evaluation of the management factor in several other respects, including by identifying unreasonable concerns with the protester’s proposed approach. *Id.* at 45-63. Finally, the protester

¹ The other disappointed offeror that previously challenged the agency’s initial award decision also filed a protest challenging the agency’s second award decision following corrective action, which our Office subsequently denied in a separate decision. See *Leidos, Inc.*, B-421252.4, Apr. 28, 2023, 2023 CPD ¶ 97.

maintains that agency's cost adjustment severely overstated BAH's proposed costs. Protest at 76-95. We address these arguments in turn.²

Failure to Conduct Discussions

First, the protester argues that the agency violated the requirements of DFARS section 215.306(c) by declining to open discussions. Protest at 95-100. The crux of the protester's argument is that the agency's rationale for not conducting discussions was superficial and arbitrary, and applied the wrong legal standard. *Id.* Specifically, the protester objects that the agency erred by deciding "that discussions were *unnecessary*, but the regulations stipulate that discussions should be conducted unless they would be *inappropriate*." Resp. to Req. for Dismissal at 15. For the reasons outlined below, we conclude that the protester's allegations concerning discussions are an untimely piecemeal presentation of protest issues.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. These timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without disrupting or delaying the procurement process. *Verizon Bus. Network Servs., Inc.*, B-419271.5 *et al.*, Apr. 26, 2021, 2021 CPD ¶ 191 at 14. Protest arguments raised after corrective action and re-award of a contract are untimely when the information underpinning such

² The protester raises several collateral arguments not addressed in this decision. We have considered each of these arguments and conclude they provide no basis to sustain the protest. For example, the protester challenges a concern expressed by the evaluators because the protester's timeline for staffing new requirements omitted narrative detail for a period of the timeline. Protest at 52-58. The protester contends that this finding was inappropriate as the period in question represents actions the agency will perform, such as government security indoctrination, so no narrative explanation was required. *Id.* However, this argument is not supported by the protester's proposal, which identifies multiple activities that the protester would perform during that period, and which the agency reasonably concluded were inadequately explained. *Id.* at 54. It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation requirements. See *STG, Inc.*, B-411415, B-411415.2, July 22, 2015, 2015 CPD ¶ 240 at 5-6.

Moreover, even assuming, for the sake of argument, that the agency erred, it is not clear that this concern was meaningful to the agency's source selection decision. Here, the source selection evaluation board (SSEB) made it clear that the concern was "not substantial," and the SSA did not expressly adopt the concern or refer to it in the SSD. See AR, Tab 78, SSEB Recommendation at 4; AR, Tab 83, SSD at 6-9. Because the SSEB's finding in this regard does not appear to have factored into the agency's final award decision, the protester cannot demonstrate competitive prejudice concerning this aspect of the evaluation, even were it erroneous. See *Up-Side Mgmt. Co.*, B-417440, B-417440.2, July 8, 2019, 2019 CPD ¶ 249 at 7.

arguments was available to the protester as part of its earlier protest, and the protester failed to raise these arguments in a timely manner. *Id.* at 15.

The protester's argument here is, in essence, an allegation of legal error--the protester is alleging that the agency applied an incorrect legal standard in assessing whether to conduct discussions. This alleged legal error, however, was present in the agency's initial evaluation and source selection decision, but the protester did not challenge the alleged error in its initial protest. In this regard, the protester concedes that the facts supporting this allegation of legal error were present in identical form in the previous source selection decision. Resp. to Req. for Dismissal at 16 (noting that "the January 31, 2023 SSDD articulates the same erroneous reasoning presented in the October 2022 SSDD for deciding again not to proceed with discussions"); see *also* Protest exh. 1.1, SSD Comparison at 3-4 (showing that the evaluation language relied on by the protester as the basis of this protest ground is substantively identical in both SSDs).

Because the protester failed to argue in its initial protest that the agency applied an incorrect legal standard in declining to conduct discussions, the agency was not aware of the protester's views on the issue. Accordingly, when the agency took corrective action, the Notice of Corrective Action did not indicate that the agency intended to open discussions or reconsider whether it was appropriate to do so. Rather, the agency only committed to "reevaluate all proposals and make a new source selection decision." Notice of Corrective Action, B-421252, B-421252.2 at 1. The protester also declined to object to the corrective action on the basis of its belief that discussions should be conducted.

The protester now argues that we should consider this protest ground because the agency, in effect, made a separate and distinct decision not to open discussions during the reevaluation, and the protester is only challenging this later determination that it could not have challenged previously. Resp. to Req. for Dismissal at 16. The protester argues that it did not understand the agency's corrective action as altering the ground rules of the competition, and that, prior to the new award and debriefing, BAH could not know that the Agency would "fail to honor DFARS 215.306(c)" and decide to proceed without discussions. *Id.*

Such an argument is entirely unpersuasive where the alleged fault is an error of law (or, at minimum, an alleged error in the agency's interpretation of the solicitation's requirements), and that error was also evident from the prior SSD. The protester has not identified any way in which the reevaluation was meaningfully different from the original evaluation with respect to the alleged error. Put another way, if the agency failed to comply with DFARS section 215.306(c) in the prior award decision, how can the protester reasonably expect a different result in the new award decision when the protester failed to call the issue to the agency's attention? In effect, the agency put the protester on notice of its understanding of the legal requirements as they applied to this solicitation in the prior SSD, and the protester declined to object. In this regard, the fact that the agency reevaluated proposals and made a new source selection decision does not provide a basis for reviving otherwise untimely protest allegations concerning other

aspects of the agency's conduct of the procurement that were not subsequently affected by the agency's corrective action. See *Catalyst Solutions, LLC*, B-416804.3, B-416804.4, Apr. 4, 2019, 2019 CPD ¶ 134 at 4.

Because the protester knew or should have known the factual basis for its argument that the agency applied an incorrect legal standard when it filed its prior protest, but failed to assert it, we dismiss the protest ground because it represents an untimely piecemeal presentation of issues. See *Gryphon Technologies, L.C.*, B-420882.2 *et al.*, Jan. 17, 2023, 2023 CPD ¶ 42 at 5 (dismissing as untimely arguments concerning discussions raised for the first time after corrective action where the protester was aware of the basis of the error prior to the corrective action); *DRS ICAS, LLC*, B-401852.4, B-401852.5, Sept. 8, 2010, 2010 CPD ¶ 261 at 21 (the fact that an agency made a new selection decision after taking corrective action does not provide a basis for reviving an otherwise untimely issue where the basis of the otherwise untimely protest allegation was not affected by the subsequent corrective action).

Management Factor Evaluation – Failure to Consider Requirements of the SOW

The protester presents several related arguments concerning the agency's evaluation of proposals under the management factor, but the core of the protester's challenge is that the agency unreasonably failed to consider the requirements of the SOW in evaluating proposals. Protest at 29-45; Comments at 6-29. The protester argues, among other things, that, while appendix B of the SOW contained minimum qualifications for various labor categories that the agency evaluated, the main body of the SOW also contained more stringent requirements for staff that the agency ignored in its evaluation of proposals. *Id.* Specifically, the protester maintains that the qualifications in the appendix are primarily concerned with degrees, certifications, and years of experience, while the SOW required personnel with specialized knowledge, skills, or abilities that exceed the minimum labor category qualifications outlined in the appendix. *Id.*

For example, the protester notes that the SOW provides that each technical task order issued under the contract will specify both labor categories and specific mandatory SOW requirements, which will convey the associated additional skills necessary to execute the technical task order. Comments at 7-8. Moreover, the protester contends that the SOW specifically directs contractors to "staff the contract with the appropriate number of personnel, mix of labor categories, and skill sets required to fully cover the Government's requirements," underscoring that the SOW required more than the minimum qualifications outlined for labor categories in the appendix. *Id.* (*citing* AR, Tab 10, SOW at § 4.2.4.2). Had the agency considered the more stringent requirements of the SOW, the protester argues, the agency would have rated the protester's proposal more highly because the protester proposed personnel that clearly demonstrated all of the required knowledge, skills, and abilities, not only the minimum qualifications set forth in appendix B to the SOW. *Id.* at 11.

In response, the agency argues that the requirements of the SOW were deliberately not incorporated into the evaluation criteria for the management factor, except with respect

to certain enumerated sections relating to the transition. MOL at 8-29. The agency argues that the fact that the evaluation criteria referenced certain sections of the SOW, and not others, reinforces the agency's position that the evaluation criteria did not require the agency to evaluate the entirety of the SOW. *Id.*

Further, the agency argues that it would actually have been inappropriate for it to consider the requirements of the SOW, other than those specifically enumerated in the evaluation criteria. MOL at 9-10. Specifically, the agency notes that, with respect to the majority of the SOW requirements, the solicitation only required offerors to provide an affirmative statement of compliance, and our decisions have concluded that agencies may not evaluate offerors against SOW requirements where the solicitation does not advise offerors that the agency will specifically evaluate the requirements of the SOW. MOL at 9-10 (*citing Mil-Mar Century Corp.*, B-407644 *et al.*, Jan. 17, 2013, 2013 CPD ¶ 39; *McCann-Erickson USA, Inc.*, B-414787, Sept. 18, 2017, 2017 CPD ¶ 300 at 3-4).

The protester responds by noting, among other arguments, that the decisions cited by the agency are inapposite because the evaluation criteria in this case specifically contemplate a broader evaluation of the SOW than the agency suggests. Comments at 6-29. Specifically, the solicitation explained that the evaluation of the management factor would involve an evaluation of an offeror's ability to "efficiently, effectively and successfully manage the requirements" of the SOW, which would, of necessity, involve consideration of what those SOW requirements entail. *Id.* (*citing* AR, Tab 19, PEC at 8). The protester contends that this language constituted an additional evaluation criterion that the agency effectively ignored, or, at worst, a consideration logically encompassed and related to other specifically enumerated evaluation criteria. *Id.* In short, the protester alleges that the agency's evaluation did not take into account whether any offerors' proposed approach demonstrated the "ability to efficiently, effectively and successfully manage the requirements" of the SOW. *Id.* (*citing* AR, Tab 19, PEC at 8).

For the reasons explained below, we do not agree with the protester that the solicitation contemplated an evaluation of compliance with the SOW, so we see no basis to conclude that the agency was unreasonable in declining to evaluate those requirements.

With respect to the protester's primary argument, we do not agree that the PEC contained an additional, separate criterion that contemplated evaluating how offerors would manage the requirements of the SOW. While the protester is correct that the evaluation criteria for the management factor begin with a general opening statement indicating that the agency will assess an offeror's ability to efficiently, effectively and successfully manage the requirements of the SOW, the solicitation goes on to explain that the management evaluation will specifically focus on the evaluation of the three subfactors. AR, Tab 19, PEC at 8-9. The solicitation also provided detailed evaluation criteria for each subfactor that clearly explain the scope of the agency's proposed evaluation, with specific cross-references to the appropriate sections of the proposal preparation instructions for each criterion. *Id.* Of note, there is no such cross-reference

to the proposal preparation instructions for the general opening statements on which the protester focuses. *Id.*

In that context, it is not reasonable to read general, summary statements with no accompanying proposal preparation instructions as creating a free-standing requirement apart from the rest of the detailed evaluation criteria. The statement on which the protester focuses is, in effect, a prefatory statement summarizing the scope of the evaluation outlined by the more detailed criteria that follow it. Put another way, the solicitation contemplates that the agency will evaluate an offeror's ability to efficiently, effectively and successfully manage the requirements of the SOW and integrate mission knowledge, but that the agency will specifically accomplish that evaluation by focusing on the three subfactors and the detailed criteria under each subfactor all of which correspond to specific sections of the proposal preparation instructions.³

This reading is further reinforced by the fact that, as the agency correctly notes, the detailed criteria refer to certain selected provisions of the SOW for which the solicitation provided proposal preparation instructions, and which the agency duly evaluated. Specifically, the PEC provided that the agency would evaluate the extent to which an offeror's program management approach describes a credible, detailed timeline and appropriate processes, performance measures, and reporting mechanisms necessary to ensure full staffing and transition within 90 days of contract award in accordance with sections 4.2.4.1 and 4.11 of the SOW. AR, Tab 19, PEC at 8. If we were to adopt the protester's preferred reading--that the prefatory language concerning management of the SOW requirements created a separate and distinct requirement for the agency to evaluate all the requirements of the SOW--it is unclear why the agency would reference specific SOW provisions in the detailed evaluation criteria as such an evaluation would already be encompassed by the previously announced evaluation of the SOW's requirements. That is to say, the protester's reading would effectively render this portion of the evaluation criteria superfluous, which further reinforces our view that the protester's reading is untenable. See *Crew Training Int'l, Inc.*, B-414126, Feb. 7, 2017, 2017 CPD ¶ 53 at 4 (concluding that a reading of an RFP which is inconsistent with

³ For the same reason, we also reject the protester's collateral argument that the agency did not adequately consider the extent to which the protester integrated mission knowledge. See Comments at 26-29. While the PEC included a statement that the agency would consider the integration of mission knowledge, that statement was likewise part of the prefatory summary statements at the beginning of the explanation of the management factor evaluation, and also did not include any cross-reference to the proposal preparation instructions. AR, Tab 19, PEC at 8. Accordingly, we likewise do not view this phrase as creating a free-standing evaluation criterion, but instead to summarize the agency's proposed evaluation as described in the more detailed criteria that followed. This reading is underscored by the fact that, as the protester notes, the agency's evaluation referred to integrating mission knowledge, but did so principally in the 'roll up' sections of the evaluation report summarizing factor and subfactor results. Comments at 28 n. 25.

other solicitation provisions or which renders some parts of the document extraneous or meaningless cannot be a reasonable reading).

Similarly, we also reject the protester's suggestion that an evaluation of the SOW was logically encompassed and related to the solicitation's specifically enumerated evaluation criteria. In this regard, as discussed above, the PEC explained that the evaluation of the management factor would focus on three subfactors, and provided specific, detailed evaluation criteria for each of the subfactors. See AR, Tab 19, PEC at 8-9. However, those detailed evaluation criteria only discuss certain specific sections of the SOW related to the transition, and do not contemplate the evaluation of the kinds of personnel knowledge, skills, or abilities the protester claims should have been evaluated. *Id.* To the extent the PEC refers to specific personnel requirements at all in the evaluation of the management factor, it refers only to evaluating an offeror's "plan for maintaining personnel qualifications, certifications, and skills that result in a trained and qualified workforce," which is simply not commensurable with an evaluation of the expertise of specific proposed personnel. *Id.* at 9. Indeed, the PEC does not state that the agency will evaluate even the minimum qualifications for labor categories identified in appendix B to the SOW as part of the evaluation of the management factor, but rather explains that those qualifications will be considered only as part of a separate evaluation of the cost factor. *Id.* at 11.

To summarize, we see no basis to conclude that the prefatory language relied on by the protester created a separate evaluation criterion that compelled a broader evaluation of the entire SOW. Instead, it merely summarized the evaluation contemplated by the more detailed evaluation criteria to follow it. Moreover, those detailed evaluation criteria simply do not contemplate the evaluation of the kinds of personnel knowledge, skills, and abilities the protester claims the agency should have evaluated as part of the management factor. In short, we see no basis to conclude that the agency erred in its evaluation of the management factor by failing to consider aspects of the SOW that were not expressly incorporated into the solicitation's evaluation criteria.

Other Challenges to the Evaluation Under the Management Factor

The protester also objects to several of the agency's evaluative findings with respect to the protester's management proposal. Protest at 45-63; Comments at 29-40. Specifically, the protester objects to the agency's assessment of negative findings with respect to the protester's proposal, and, in one instance, alleges that the agency disparately evaluated proposals. *Id.* We address each of the protester's challenges below.

Functional Leads

First, the protester argues that the agency's concern relating to the protester's functional leads was unreasonable. Protest at 47-51; Comments at 31-32. In this regard, the agency concluded that the protester proposed [DELETED] functional lead per labor category, but that because labor categories varied significantly in staff numbers

[DELETED] functional lead may not be as effective supporting “hundreds of analysts as opposed to supporting 30-40 analysts on [d]ay 1 of the contract.” AR, Tab 78, SSEB Recommendation at 3. The protester responds by noting that the protester did not merely propose [DELETED] functional lead per labor category, but rather made clear that functional leads would scale in proportion to the number of labor categories and people operating in each category. Protest at 47-51; Comments at 31-32. Further, the protester notes that its cost proposal confirmed this approach as, for example, it proposed [DELETED] full-time equivalent (FTE) for [DELETED] of the functional leads, but proposed [DELETED] FTEs and [DELETED] FTEs for [DELETED] other functional leads. Protest at 49; Comments at 31.

In response, the agency argues that, while the protester’s proposal suggests that the protester would scale functional leads, it does not explain how it would do so. MOL at 32-43. Indeed, the protester’s management proposal identified [DELETED] functional leads by name and photograph, but did not identify any labor category as having more than [DELETED] functional lead. *Id.* at 33. Moreover, the contemporaneous evaluation acknowledges that the proposal contemplated that the protester could scale the requirements as needed, but that this did not address the agency’s concerns that the functional leads may not be effective on day one of the contract. *Id.* at 34.

Finally, the agency notes that while the protester’s cost proposal indicated some limited scaling for [DELETED] of the proposed functional leads (*i.e.*, designating [DELETED] FTEs), the solicitation provided that the management proposal would be evaluated independently of the cost proposal, so it would have been inappropriate to consider the cost volume in the evaluation of the management proposal. *Id.* at 38-39. Alternatively, even assuming the agency was permitted to consider the cost proposal information in the evaluation of the management proposal, the agency argues that the fact that the protester proposed [DELETED] FTEs for one functional lead and [DELETED] FTEs for another raises more questions than it answers given that the management proposal identified exactly [DELETED] individual functional lead per labor category, not [DELETED], and did not explain that some functional leads would have overlapping responsibilities. *Id.* That is to say, even read as a whole, the proposal was unclear with respect to the protester’s approach to scaling functional leads on day one of contract performance. *Id.*

In reviewing a protest challenging an agency’s evaluation, our Office will not reevaluate proposals; rather, we will examine the record to determine whether the agency’s evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. *OPTIMUS Corp.*, B-400777, Jan. 26, 2009, 2009 CPD ¶ 33 at 4. A protestor’s disagreement with the agency’s judgment, by itself, is not sufficient to establish that an agency acted unreasonably. *Hughes Network Sys., LLC*, B-409666.5, B-409666.6, Jan. 15, 2015, 2015 CPD ¶ 42 at 6.

Here, we agree with the agency that the protester’s management proposal and cost proposal are not fully congruent. While the cost proposal proposes [DELETED] FTEs for [DELETED] of the functional lead positions, the management proposal presents

exactly [DELETED] functional lead for each labor category and does not provide that the functional leads will overlap, only explaining that the positions may scale in the future. See, e.g., AR, Tab 31, BAH Management Proposal at 45. Accordingly, we do not think the agency erred by focusing on the narrative in the management volume when evaluating the management factor where there was a minor inconsistency between the volumes. *LexisNexis, Inc.*, B-299381, Apr. 17, 2007, 2007 CPD ¶ 73 at 5 (concluding that an agency is under no obligation to parse a protester's proposal to try to harmonize disparate proposal sections).

Furthermore, even if the agency had considered the information in the protester's cost proposal, we fail to see how it would have addressed the agency's concern. The agency noted that the protester's proposed approach to functional leads at contract initiation did not appear to appropriately scale to the size of the labor categories because, for example, one of the labor categories would involve more than 400 staff on day one of the contract, while another labor category would have only approximately 30 staff. AR, Tab 78, SSEB Recommendation at 3. That is to say, the agency was concerned that the protester proposed [DELETED] individual functional leads across four labor categories, some of which would involve many more people than a [DELETED] individual could effectively lead, especially given that some labor categories would have a greater than ten-fold difference in size.

The fact that the protester's cost proposal, in effect, proposed to divide [DELETED] total FTEs by allocating [DELETED] FTEs to one of those larger labor categories and [DELETED] FTEs to one of the smaller labor categories, does not meaningfully ameliorate the agency's concern that the functional lead positions could be inadequate to effectively support hundreds of analysts on day one of the contract. When considering the management of a labor category including more than 400 people, we see no reason to think the agency would have reached a different evaluative conclusion had it considered the addition of a [DELETED] FTE to the functional lead position for that labor category.

Mission Delivery Leads

Next, the protester challenges the agency's concern regarding the protester's mission delivery leads. Protest at 51-52; Comments at 32-33. Specifically, the agency was concerned that the mission delivery leads might struggle to balance mission requirements and administrative responsibilities because they were assigned many significant program management responsibilities in addition to their direct responsibilities. AR, Tab 78, SSEB Recommendation at 3. Although the SSEB identified this as a concern, they nevertheless noted that the concern did not outweigh the overall strength of the protester's proposal under the management evaluation factor. *Id.* The protester contends that the SSA erred in magnifying this minor concern, concluding that it was a discriminator between the protester's and awardee's proposals

without adequately explaining this departure from the underlying evaluation.⁴ Protest at 51-52; Comments at 32-33.

The agency responds that no unreasonable magnification took place; rather, the SSA properly looked behind the adjectival ratings assigned to the proposals to consider the substance of the underlying evaluation. In this regard, the agency contends that the SSA merely reasonably determined that the protester's proposal included a unique risk to unsuccessful contract performance that was not presented by the awardee's proposed approach. See MOL at 44-47. As noted above, in reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. *OPTIMUS Corp.*, *supra*.

Here, we find no basis to object to the SSA's consideration of the issue. In this case, the evaluators assigned a strength, but also noted a concern that did not outweigh the strength. AR, Tab 78, SSEB Recommendation at 3. The SSA adopted both of the SSEB's findings, concurring in both the strength rating, but also in the concern. AR, Tab 83, SSD at 7. The fact that the SSA considered the SSEB's clearly expressed concern to be a meaningful distinction between the proposals does not represent a departure from the underlying evaluation requiring any additional explanation. Put another way, to the extent the concern expressed by the SSEB was a minor one, where, as here, two offerors are closely matched with similar adjectival ratings, even a minor concern may ultimately represent a discriminator between the proposals. See, e.g., *Credence Management Sols., LLC*, B-417389.2, July 31, 2019, 2019 CPD ¶ 283 at 11-12. In short, the protester simply disagrees with the weight the agency assigned to the evaluated concern; this type of subjective disagreement, without more, does not provide any basis to conclude that the agency's evaluation was unreasonable. *Protection Strategies, Inc.*, B-416635, Nov. 1, 2018, 2018 CPD ¶ 33 at 7.

⁴ The protester initially also challenged the substance of the agency's finding concerning the mission delivery leads, claiming the agency misread the protester's proposal. Protest at 51-52. The agency responded at length to this aspect of the protester's challenge in the agency report explaining why the agency was reasonable in its reading of the protester's proposal. MOL at 44-47. In its comments on the agency report, the protester did not address the agency's response concerning the substance of the agency's finding, only challenging the SSA's alleged departure from the underlying evaluation. Comments at 32-33. Where an agency provides a detailed response to a protester's assertions and the protester does not respond to the agency's position we deem the initially-raised arguments abandoned. *Citrus College; KEI Pearson, Inc.*, B-293543 *et al.*, April 9, 2004, 2004 CPD ¶ 104 at 8 n.4. Accordingly, we consider this aspect of the protester's argument to be abandoned and do not consider it further.

Recruiting Approach

The protester similarly objects to the agency's finding that the protester's proposal lacked detail concerning its recruiting methods or engagement with academia and the intelligence community, which prevented the government from evaluating the efficiency and effectiveness of those particular methods. Protest at 58-61; Comments at 35-36. In this regard, the protester argues that the solicitation did not require offerors to propose--and BAH in fact did not propose--recruiting from either academia or the intelligence community. *Id.* Accordingly, the protester contends that the agency either applied an unstated evaluation criterion, or impermissibly evaluated its proposal by comparing it to CACI's proposal, which specifically proposed to recruit from academia and the intelligence community. *Id.*

In response, the agency argues that the protester's proposal reasonably demonstrates that the protester proposed to recruit both from academia and from the intelligence community, but that the protester provided limited detail about its approach to recruiting from those talent pools, and so the agency's finding was appropriate. MOL at 55-59. For the reasons that follow, we agree with the agency.

As to recruiting from academia, the protester unambiguously proposed to recruit from academia through a student intern program, explaining that this would permit it to "[a]ttract students prior to graduation." AR, Tab 31, BAH Management Proposal at 174; see also AR, Tab 62, BAH Management Factor Consensus Report at 17 (explaining that BAH's proposal lacked detail on how it would recruit from academia because it included a brief mention of summer intern programs but failed to elaborate as to how these recruiting methods are being implemented).

With respect to the intelligence community, the protester proposed a military transitioning program, which sought among other things to attract "cleared analyst talent," (*i.e.*, individuals with security clearances) and individuals "connected to the mission." *Id.* The protester's proposal does not further explain what "the mission" means in this context, but the agency argues that it reasonably understood the phrase to refer to the agency's intelligence mission. MOL at 57 n.22; see also AR, Tab 62, BAH Management Factor Consensus Report at 17. Put another way, it is unclear what precisely the protester meant by seeking to recruit military members "connected to the mission," but it is not unreasonable to conclude from context that the protester was proposing to attract individuals that are "cleared analyst[s]" with connections or experience in the intelligence community, which collectively employs significant numbers of military personnel. *Id.* Indeed, the protester has not proffered an alternative reading of this section of its proposal. Based on these proposed recruiting initiatives, it was not unreasonable for the agency to conclude that the protester proposed to recruit from academia and the intelligence community, and therefore it was likewise appropriate for the agency to evaluate the protester's proposal on how effectively the protester proposed to do so.

Having established that the agency reasonably interpreted BAH's proposal as proposing to recruit from academia and the intelligence community, we find no basis to object to the agency's evaluated concern that the proposal lacked detail on these aspects of the protester's proposed recruiting approach, especially as compared to other aspects of its proposed recruitment practices. MOL at 57; see *also* AR, Tab 62, BAH Management Factor Consensus Report at 17 (noting in this connection that the proposal includes a brief mention of summer intern programs and military transition programs, but fails to elaborate as to how these recruiting methods are being implemented). For example, the agency correctly notes that the protester's proposal provided significant detail about network-based recruiting, but very little information about its internship program. MOL at 57. On the record before us, we see no basis to question the agency's substantive conclusion that the protester's proposal lacked detail in this respect. See AR, Tab 19, PEC at 9 (providing that the agency would evaluate "[t]o what extent does the Offeror's approach describe an effective and efficient recruiting method and process to ensure full staffing throughout the contract?"); *Epsilon Sys. Solutions, Inc.*, B-414410, B-414410.2, June 6, 2017, 2017 CPD ¶ 199 at 11-12 (denying protest challenging an agency's assignment of a risk where the protester failed to provide sufficient detail regarding its recruiting approach).

Military Equivalencies

Next, the protester contends that the agency unfairly penalized its proposal for failing to propose new or additional military equivalencies. Comments at 37-39. In this regard, the protester notes that the SOW included an appendix outlining numerous military equivalencies for various labor categories. *Id.* The protester contends that it took no exception to these equivalencies in its proposal, and, on the contrary, viewed those equivalencies as sufficient to facilitate recruiting of military personnel. *Id.* Moreover, while the solicitation permitted offerors to propose additional military equivalencies, the protester argues that the solicitation did not require offerors to do so, and accordingly, the agency erred in identifying this as an area of concern. *Id.*

Additionally, the protester alleges that the agency disparately evaluated similar proposal features, because the agency improperly credited CACI's proposed military equivalencies as a positive feature of its proposal. *Id.* at 38. However, while CACI's proposal claimed that its equivalency list would allow CACI to capture prior military personnel who have the necessary skills, CACI proposed only a single additional military equivalency related to [DELETED], and no additional equivalencies related to active duty military personnel. *Id.* The protester contends that the agency erred because, while both proposals failed to propose additional active duty equivalencies, only its proposal was penalized. *Id.*

The agency responds that the solicitation not only encouraged offerors to propose additional equivalencies, but the PEC explained that the agency would specifically evaluate proposals on the extent to which each offeror provided new equivalencies to add to the equivalency list to better align personnel effectively and efficiently to requirements. MOL at 60; AR, Tab 19, PEC at 9. Moreover, the agency notes that the

protester's proposal included a list of more than forty new equivalencies, but these equivalencies were focused solely on certifications, and did not propose any additional equivalencies related to military service. MOL at 59-62. However, the protester's proposal explained that [DELETED] of its staff join through military channels. See AR, Tab 31, BAH Management Proposal at 174. Given the extent of the protester's reliance on former military personnel, the agency contends that it was reasonably concerned that the protester did not address or propose any new military equivalencies in its proposal. MOL at 59-62.

As to the protester's disparate treatment argument, the agency notes that CACI's proposal did in fact propose specific military equivalencies and provided examples of applying its proposed equivalencies in its proposal. *Id.* That is to say, the agency argues that any differences in the evaluation stemmed from differences in the proposals, not from impermissible disparate treatment. *Id.* We find no basis on which to sustain the protest.

First, we see no basis to question the agency's evaluation of the protester's proposed equivalencies. Here, the solicitation specifically advised offerors that they would be evaluated, among other things, on the extent to which they proposed new equivalencies. AR, Tab 19, PEC at 9. This did not expressly require the proposal of new military equivalencies, but in the context of the protester's proposed approach--which relied heavily on former military personnel--the agency was reasonably concerned with the lack of any substantive discussion of military equivalencies in the protester's proposal. That is to say, while the solicitation did not, of necessity, require offerors to propose new military equivalencies, it was unobjectionable for the agency to question why the protester did not do so, given the protester's significant reliance on former military personnel.

The protester's disparate treatment argument is likewise without merit. To prevail on an allegation of disparate treatment a protester must show that the agency unreasonably downgraded its proposal for deficiencies that were substantively indistinguishable from, or nearly identical to, those contained in other proposals. *Office Design Group v. United States*, 951 F.3d 1366, 1372 (Fed. Cir. 2020); *Battelle Memorial Inst.*, B-418047.3, B-418047.4, May 18, 2020, 2020 CPD ¶ 176 at 5. Stated differently, to demonstrate unequal treatment, a protester must show that the differences in the evaluation did not stem from differences between the proposals. *IndraSoft, Inc.*, B-414026, B-414026.2, Jan. 23, 2017, 2017 CPD ¶ 30 at 10; *Paragon Sys., Inc.*; *SecTek, Inc.*, B-409066.2, B-409066.3, June 4, 2014, 2014 CPD ¶ 169 at 8-9.

While the protester and agency disagree on the extent to which the awardee proposed additional military equivalencies, it is uncontested that the awardee proposed at least one new military equivalency with respect to [DELETED], while the protester proposed no new military equivalencies. See Comments at 38. Additionally, the awardee provided additional supporting narrative explaining [DELETED]. See AR, Tab 57, CACI Management Proposal at 103, 109-110. Collectively, the presence of an additional military equivalency with supporting narrative supports the agency's view that the

awardee's proposal engaged with military equivalencies in a substantively different way than the protester's proposal. In short, the two proposals were not substantively similar in this regard, and the protester's allegation of disparate treatment therefore fails.

Cost Evaluation

Finally, the protester challenges the agency's cost evaluation. The protester argues that the agency misunderstood the protester's cost proposal, erred in upwardly adjusting its costs, and applied unstated evaluation criteria as part of the cost evaluation. Comments at 40-53. Specifically, the protester alleges, based on several alleged errors, that its most probable cost should have been \$2,597,012,557 rather than the \$2,734,298,357 most probable cost calculated by the agency, a difference of \$137,285,800. *Id.* at 52-53. The protester maintains that without this alleged error its most probable cost would have been significantly closer to the awardee's most probable cost of \$2,490,747,403, and its proposal would have been more competitive for award. *Id.*

In response, the agency contests each of the protester's allegations. MOL at 90-125; Supp. MOL at 16-23. Among other arguments, the agency contends that, to the extent the agency may have misunderstood the protester's cost proposal, it was solely a result of the protester's failure to follow the solicitation's cost template and instructions. See Supp. MOL at 19. Moreover, the agency argues that much of the cost difference in the protester's analysis is driven by choosing different cost assumptions than those the agency made, and that this amounts to nothing more than disagreement with the agency's method of cost analysis. *Id.* at 16-23.

We do not reach the substance of these arguments because, even assuming the protester's analysis is correct in all respects, the protester cannot establish competitive prejudice on these facts. Competitive prejudice is an essential element to every viable protest, and where an agency's improper actions did not affect the protester's chances of receiving award, there is no basis for sustaining the protest. *American Cybernetic Corp.*, B-310551.2, Feb. 1, 2008, 2008 CPD ¶ 40 at 3. In this case, even if we assume the protester is correct, the protester's proposal would still have a higher most probable cost than the awardee's proposal: while the cost difference between the proposals would narrow from a 9.8 percent difference to a 4.8 percent difference, the protester would remain the higher cost proposal.

Moreover, as discussed above, we see no basis to question the agency's evaluation of the management factor, and therefore have no reason to disturb the agency's conclusion that CACI's management proposal was technically superior to BAH's management proposal. See AR, Tab 83, SSD at 8. That is to say, even using the protester's preferred most probable cost, its proposal would remain both more costly

and lower technically rated than the awardee's proposal. Accordingly, we see no possibility that the protester was competitively prejudiced by any alleged error in the evaluation of the protester's cost proposal.

The protest is denied.

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