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## Decision

**Matter of:** Zolon PCS II, LLC; Polaris Consulting Group, Inc.

**File:** B-420745.2, B-420745.3, B-420745.4, B-420745.5

**Date:** September 20, 2023

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### DIGEST

1. Protest challenging the evaluation of an awardee's technical proposal as noncompliant with the terms of the solicitation is denied; based on the terms of the solicitation, the agency reasonably considered the awardee's proposed level of premium pay because the discussion of premium pay did not include actual labor rates.
2. Protests challenging the evaluation of proposals under the technical/management factor are denied where the evaluation was conducted reasonably and in accordance with the terms of the solicitation.
3. Protest challenging the evaluation of proposals under the past performance factor is denied where the evaluation was conducted reasonably and in accordance with the terms of the solicitation.
4. Protest challenging the agency's affirmative determinations of responsibility is dismissed in part as raising an issue not for GAO's consideration, and in part as untimely.

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## DECISION

Zolon PCS II, LLC, a mentor-protégé joint venture small business<sup>1</sup> of Ashburn, Virginia, and Polaris Consulting Group, Inc. (Polaris), a small business of Alexandria, Virginia, protest the award of contracts to Bailey Information Technology Consultants, LLC (Bailey), a small business of Stafford, Virginia, and LMR Technical Group LLC (LMR), a small business of Fort Walton Beach, Florida. The awards were made by the National Geospatial-Intelligence Agency (NGA) under request for proposals (RFP) No. HM0476-21-R-0010, for professional administrative support services. The protesters raise a number of challenges to the agency's evaluation and award decisions.

We deny the protests.

## BACKGROUND

NGA is a member of the intelligence community tasked with producing timely, relevant, and accurate geospatial intelligence. Zolon PCS II Agency Report (AR), Tab A.1.b, Statement of Work (SOW) at 3.<sup>2</sup> NGA's mission requires effective execution of office administrative services. *Id.* The instant procurement is for NGA's Enterprise Support for Administrative Services (ESAS-II) indefinite-delivery, indefinite-quantity (IDIQ) contract, which is intended to fulfill the agency's need for professional administrative support services.<sup>3</sup> *Id.* at 2.

On August 12, 2021, NGA issued the RFP as a small business set-aside. RFP at 1-4. The RFP contemplated the award of up to two IDIQ contracts, each with a 1-year base period and four 1-year option periods. Zolon PCS II AR, Tab A.1.b, SOW at 2. Using the procedures of Federal Acquisition Regulation (FAR) part 15, contracting by negotiation, IDIQ contracts would be awarded to the firms whose proposals represented the best value to the government. RFP at 19. Upon IDIQ contract award, each awardee would be issued a task order with a 1-year base period and four 1-year option periods. Zolon PCS II Combined Contracting Officer's Statement and Memorandum of

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<sup>1</sup> Zolon PCS II is composed of Zolon Tech Inc., of Herndon, Virginia, and Pioneer Corporate Services, Inc., of Ashburn, Virginia.

<sup>2</sup> Zolon PCS II and Polaris filed separate protests of this procurement. We have consolidated the issues and resolve them with this single written decision. The agency filed a similar report in each protest using a common document labeling system. We note that all of our citations to the solicitation and solicitation-related documents are to the same version of the documents. See e.g., Zolon PCS II AR, Tab A.1.b, SOW; Polaris AR, Tab A.1.b, SOW; see also Zolon PCS II AR, Tab A.7, RFP Amend. 0006 (RFP); Polaris AR, Tab A.7.a, RFP.

<sup>3</sup> The procurement is for "follow-on" contracts to the previous ESAS contract.

Law (COS/MOL) at 2; Zolon PCS II AR, Tab A.1.c, Task Order 1 SOW at 6; Zolon PCS II AR, Tab A.1.d, Task Order 2 SOW at 6.

Award would be made using a two-phase evaluation considering the following evaluation factors: (1) technical/management; (2) past performance; (3) security; and (4) price. RFP at 22. Relevant to the protests, the technical/management factor included the following three subfactors: (1.1) retention; (1.2) transition and staffing; and (1.3) program management and quality control. *Id.* The retention subfactor of the technical/management factor was further divided into two components: (1.1.1) compensation, incentives, and benefits approach; and (1.1.2) retention history. *Id.* at 6.

Phase one of the competition would consider only the retention subfactor of the technical/management factor. *Id.* at 5. To satisfy the retention subfactor, offerors were required to address their approach to providing a consistent customer experience by recruiting qualified personnel and reducing turnover. *Id.* at 6. Under the retention subfactor (as with the entire technical/management factor), proposals would be rated on a scale of: outstanding, good, acceptable, marginal, or unacceptable. *Id.* at 19-20, 23. Underlying the adjectival ratings, aspects of proposals could earn strengths and weaknesses of varying degrees (this also applied to the entire technical/management factor). *Id.* at 24. Positive aspects of proposals could be noted as significant strengths, major strengths, or minor strengths. *Id.* Negative aspects of proposals could be noted as significant weaknesses, moderate weaknesses, or minor weaknesses. *Id.* Aspects of proposals simply meeting standards could be noted as “meets standard.” *Id.*

After evaluating proposals under the retention subfactor, the agency would issue advisory “down-select” notices to all offerors. *Id.* at 19-20. The advisory down-select notices would inform each offeror whether they were invited to participate in phase two, or whether the offeror was unlikely to be a “viable competitor” in phase two. *Id.* The advisory down-select notices were only recommendations and would not bar any phase-one offeror from competing in phase two. *Id.*

Phase two of the competition would consider all remaining evaluation factors and subfactors. *Id.* at 5. As noted above, the technical/management factor would be evaluated on a scale of: outstanding, good, acceptable, marginal, or unacceptable. *Id.* at 23. The past performance factor would be rated on a scale of: substantial confidence, satisfactory confidence, neutral confidence, limited confidence, or no confidence. *Id.* at 25. The security factor would be rated on a pass/fail basis. *Id.* at 27-28. Finally, under the price factor, proposals would be evaluated for reasonableness and unbalanced pricing. *Id.* at 29-30. The agency reserved the right to evaluate proposals for price realism. *Id.* at 29.

To make the best-value decision, the evaluation results of the phase-one evaluation would be carried over to phase two for the purpose of conducting an overall evaluation. *Id.* at 5. Under the technical/management factor, the retention subfactor was considered “slightly more important” than the remaining subfactors. *Id.* at 22. The transition and staffing subfactor and the program management and quality control

subfactor were of equal importance. *Id.* The past performance factor was considered “slightly less important” than the technical/management factor. *Id.* As previously noted, the security factor was rated on a pass/fail basis. *Id.* When combined, all non-price factors were considered “significantly more important” than the price factor. *Id.*

The agency received phase-one proposals from 24 firms. Zolon PCS II AR, Tab D.1, Source Selection Decision Document (SSDD) at 2.<sup>4</sup> Five firms were advised “that they were competitive” and encouraged to participate in phase two. *Id.* NGA received phase-two proposals from seven firms including Zolon PCS II, Polaris, LMR, and Bailey. *Id.* On February 2, 2022, the agency conducted an “initial evaluation” and established a competitive range of five firms which included Zolon PCS II, Polaris, LMR, and Bailey. *Id.* Discussions were held with the five firms included in the competitive range. *Id.* at 3. Following discussions, the agency requested revised proposals and conducted an evaluation. *Id.*

On April 20, the agency awarded IDIQ contracts to Polaris and LMR. Zolon PCS II COS/MOL at 3. Zolon PCS II then filed a protest with our Office challenging the awards to Polaris and LMR. *Id.* In response to the protest, NGA elected to take corrective action rendering the protest academic. *Zolon PCS II, LLC, B-420745, May 23, 2022* (unpublished decision).

Following the dismissal of Zolon PCS II’s first protest, the agency held two rounds of discussions. Zolon PCS II AR, Tab D.1, SSDD at 3. Following the second round of discussions, the agency requested what would become the final revised proposals. *Id.* The source selection evaluation board chairperson concluded the evaluation of the final revised proposals on March 30, 2023. *Id.* The relevant evaluation results are as follows:

	Zolon PCS II	Polaris	Bailey	LMR
<b>Technical/Management</b>	Good	Good	Good	Outstanding
<b>Retention</b>	Good	Good	Good	Outstanding
<b>Transition &amp; Staffing</b>	Good	Outstanding	Outstanding	Outstanding
<b>Program Management &amp; Quality Control</b>	Good	Acceptable	Acceptable	Good
<b>Past Performance</b>	Neutral	Satisfactory	Satisfactory	Satisfactory
<b>Security</b>	Pass	Pass	Pass	Pass
<b>Total Evaluated Price</b>	\$73,465,362	\$77,574,844	\$77,427,357	\$82,061,841

*Id.* at 5.

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<sup>4</sup> We note that an unredacted copy of the SSDD was filed in the Zolon PCS II matter and the Polaris matter. Both protesters had access to the same version of the document. See Zolon PCS II AR, Tab D.1, SSDD; Polaris AR, Tab D.1, SSDD.

Based on the evaluation of the final revised proposals, the source selection authority (SSA) determined that the proposals submitted by Bailey and LMR represented the best value to the government. *Id.* at 12. Accordingly, the agency made awards to those two firms. *Id.* at 18-19. On June 12, Zolon PCS II and Polaris filed the instant protests.

## DISCUSSION

The protesters challenge this procurement in a number of ways. Zolon PCS II and Polaris challenge the agency's technical evaluation of proposals. Zolon PCS II also challenges the agency's past performance evaluation and the contracting officer's affirmative determinations of responsibility. As discussed below, we do not find a basis to sustain the protests.<sup>5</sup>

The evaluation of an offeror's technical proposal is a matter within the agency's broad discretion. *Textron Sys. Corp.*, B-420711, B-420711.2, Aug. 1, 2022, 2022 CPD ¶ 207 at 4. Our Office will not substitute our judgment for that of the agency; rather, we will examine the record to determine whether the agency's judgments were reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. *Id.* A protester's disagreement with the agency's judgment--without more--does not establish that the evaluation was unreasonable. *Jacobs Tech., Inc.*, B-411784, B-411784.2, Oct. 21, 2015 2015 CPD ¶ 342 at 6.

It is a fundamental principle of government procurement that agencies must treat offerors equally, which means, among other things, that they must evaluate proposals in an even-handed manner. *Textron Sys. Corp.*, *supra* at 7; *OnPoint Consulting, Inc.*, B-417397.3 *et al.*, Oct. 3, 2019, 2019 CPD ¶ 332 at 6. Where a protester alleges unequal treatment in an evaluation, it must show that the differences in ratings did not stem from differences in the proposals. *OnPoint Consulting, Inc.*, *supra* at 8-9 (denying allegation of disparate treatment where, although the protester was able to show some similarities in proposed approaches, it was unable to show that its approach was similar to all aspects of the awardee's approach for which the awardee earned a strength).

In reviewing an agency's evaluation, we do not limit our review to contemporaneous evidence. *Science Applications Int'l Corp., Inc.*, B-408270, B-408270.2, Aug. 5, 2013, 2013 CPD ¶ 189 at 8 n.12. We may consider all the information provided, including the parties' arguments and explanations. *Id.* While we generally give little weight to reevaluations and judgments made in the heat of litigation, *Boeing Sikorsky Aircraft Support*, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15, post-protest explanations that provide a detailed rationale for contemporaneous conclusions and

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<sup>5</sup> The protesters raise several collateral arguments. While we do not address each argument, we have reviewed them all and find no basis to sustain the protests. For example, the protesters argue that the best-value tradeoffs were tainted by flaws in the underlying evaluations. As discussed in our decision, we conclude that the agency's evaluation was reasonable; therefore, we find that the tradeoffs were not tainted by evaluation errors.

simply fill in previously unrecorded details will generally be considered so long as those explanations are credible and consistent with the contemporaneous record. *Remington Arms Co., Inc.*, B-297374, B-297374.2, Jan. 12, 2006, 2006 CPD ¶ 32 at 12.

### Challenges under the Retention Subfactor

Zolon PCS II and Polaris challenge the agency's evaluation of proposals under the retention subfactor of the technical/management factor. These challenges stem from the agency's decision to credit LMR and Bailey with strengths for offering premium pay to employees holding security clearances. Polaris raises the threshold issue of whether offerors were allowed to include in their technical proposals information regarding the percentage of premium pay offered to cleared employees. According to Polaris, they were not, and therefore, the agency unreasonably considered such information under the retention subfactor. Zolon PCS II and Polaris further argue that the agency evaluated proposed compensation in a disparate manner, and that the agency's evaluation of LMR's proposed premium pay for cleared employees was unreasonable. We first address the threshold issue, then address the agency's evaluation of proposals. As explained below, we deny these grounds.

#### NGA Reasonably Considered LMR's Proposed Level of Premium Pay

Polaris argues that NGA unreasonably assessed a strength to LMR's proposal under the retention subfactor because that strength stemmed from--what Polaris frames as--pricing information regarding a [DELETED] percent pay premium for cleared employees that LMR improperly included in its technical proposal. Polaris Protest at 18-24; Polaris Comments & Supp. Protest at 5-10. According to Polaris, LMR should have been disqualified from the competition for including such information in its technical proposal. The protester urges that at minimum, the agency should have disregarded such information rather than concluding that it represented a major strength in LMR's proposal. As discussed below, we find that LMR's [DELETED] percent pay premium for cleared employees was not prohibited pricing information and NGA's consideration of the [DELETED] percent premium was reasonable.

Under the retention subfactor, offerors were instructed to address their approach to providing "consistent customer experience by recruiting qualified personnel and reducing turnover." RFP at 6. The retention subfactor was divided into two components. Relevant here, under the first component, offerors were instructed to "present their comprehensive strategy to recruit cleared and qualified personnel, retain those personnel and execute successful turnover management." *Id.* In responding to this component, offerors were advised not to include specific labor rates in this volume of their proposals. *Id.*

Proposals would be evaluated to assess the offeror's approach to "executing the ESAS-II services as stated in the SOW, including the Offeror's understanding of the requirement, ability to provide appropriate and qualified personnel, provide consistent customer experience by reducing turnover, and the staffing and retention approach and

methodology.” *Id.* at 20. Relevant to the first component of the retention subfactor, the requirement would be met by proposing “a competitive compensation, incentive and benefits package and demonstrat[ing] the ability to recruit and retain personnel capable of meeting the ESAS II requirements.” *Id.*

In discussing its compensation strategy, LMR stated that its compensation derived from data provided by the Economic Research Institute (ERI) database of wage surveys as well as the Bureau of Labor Statistics (BLS) and other publicly available sources of information. Polaris AR, Tab B.3.a, LMR Step 1 Proposal at 6. LMR explained that it uses the data from these sources to “buil[d] a data table” listing labor rates in the 25th, 50th, and 75th percentiles for the relevant labor categories. *Id.* To determine final rates, LMR’s proposal stated that it used the [DELETED] percentile labor rate and added a “premium of [DELETED] [percent] to account for clearances and density of available candidates by geographic region.” *Id.* at 6-7.

As discussed above, the agency rated phase-one proposals adjectivally and assessed them with strengths and weaknesses of varying degrees. LMR’s proposal earned a rating of outstanding based on three major strengths and two minor strengths. Polaris AR, Tab D.1, SSDD at 5.

Relevant to Polaris’s protest ground, LMR earned the following major strength:

- The Offeror’s compensation is moderately above standard.

- LMR’s wage and salary determinations are based on the following:  
Team LMR’s direct experience providing [cleared administrative professionals such as executive assistants and administrative assistants],  
Team LMR’s experience supporting NGA since 2013, Industry research conducted for the specific experience and complexity required for every position level, and [c]ompensation[] surveys: [ERI] and [BLS].

- [LMR] utilized labor rates from the [ERI] database of wage surveys. They built a data table that included a 25th percentile, a 50th percentile (median) and a 75th percentile labor rate. The final rates for are [sic] from the [DELETED] percentile with an added premium of [DELETED] [percent] to account for clearances and density of available candidates by geographic region.

Polaris AR, Tab C.3.a, LMR Step 1 Evaluation at 2-3.

The SSA found in comparing LMR’s proposal with Polaris’s proposal under the non-price factors that LMR’s proposal demonstrated “greater ability to achieve stabilized support through its competitive compensation plan, over that of Polaris’ proposal.” Polaris AR, Tab D.1, SSDD at 8. The SSA noted that LMR’s compensation plan provided details on how a [DELETED] percent premium was included “to account for cleared personnel at various clearance levels.” *Id.* The SSA further concluded that

LMR's compensation was "more robust" than the compensation plan submitted by Polaris because Polaris did "not provide details on the amount of the clearance premium." *Id.* The SSA also noted that cleared positions typically come with a premium associated with recruiting and retaining cleared personnel, and that including a premium for obtaining cleared personnel was seen as valuable since cleared personnel are required for the ESAS-II contract. *Id.* at 9. In conducting the best-value tradeoff between LMR and Polaris, the SSA cited LMR's "competitive compensation plan" as a distinguishing factor. *Id.* at 12.

Polaris challenges the strength assessed to LMR's proposal for its compensation model that includes a [DELETED] percent premium for cleared personnel. Polaris Protest at 18-24; Polaris Comments & Supp. Protest at 5-10. According to the protester, the RFP expressly prohibited offerors from including pricing information in their technical proposals and LMR's [DELETED] percent premium for cleared personnel was prohibited pricing information. *Id.* Thus, Polaris argues that NGA's favorable consideration of LMR's [DELETED] percent premium violated the terms of the solicitation.

To support this position, Polaris first points to the RFP's instructions for the retention subfactor which stated that proposals should "not include specific labor rates." Polaris Comments & Supp. Protest at 6 (citing RFP at 6). Next, Polaris points to the following two questions and answers (Q&As):

Q 15: Could the Government clarify if it will be evaluating direct labor rates or any financial information in Sub-factor 1.1 - Retention? Standard 1.1.1 refers to Compensation, Incentives, and Benefits Approach. In terms of "compensation" will the Government be evaluating direct labor rates? If not, what other type of information will the Government be evaluating in terms of compensation?

A 15: The Offeror's response should focus on their strategy and should not include specific rates or other pricing information.

Q 53: RFP [ ] Sub-factor 1.1 – Retention [ ] states labor rates should not be provided but can the Government validate that it does not want other rates, values or amounts related to any compensation discussion in the Step 1 proposal submission?

A 53: Correct. The Offeror's response should focus on their strategy and should not include specific rates or other pricing information.



*Id.* (citing Polaris AR, Tab A.8, Q&As at Questions 15, 53).<sup>6</sup> The protester argues that this language barred offerors from including in their technical proposals information related to increased pay by a specified percentage. Polaris Protest at 19-20.

NGA defends its evaluation of proposals under the retention subfactor as reasonable and consistent with the solicitation. Polaris COS/MOL at 13-25. The agency explains that the retention subfactor required offerors to address their approaches to recruit qualified personnel and reduce turnover using compensation, incentives and benefits. *Id.* at 17. NGA acknowledges the RFP's proscription on including pricing information in technical proposals but argues that LMR's general discussion of a [DELETED] percent premium for individuals holding security clearances was not prohibited pricing information. *Id.* at 17-18. Rather, NGA asserts that the agency viewed the reference to a [DELETED] percent pay premium as part of LMR's comprehensive strategy to recruit and retain qualified personnel--information expressly called for by the solicitation. *Id.* NGA further supports its position by contending that LMR's reference to a [DELETED] percent premium was "absent of any pricing context" and "served only to demonstrate one important aspect of LMR's approach." *Id.* at 18.

Where a dispute exists as to a solicitation's actual requirements, we begin by examining the plain language of the solicitation. *Global Sols. Ventures*, B-420254, B-420254.2, Jan. 11, 2022, 2022 CPD ¶ 86 at 5; *Textron Sys. Corp.*, *supra* at 5. We resolve questions of solicitation interpretation by reading the solicitation as a whole and in a manner that gives effect to all provisions. *Anders Constr., Inc.*, B-414261, Apr. 11, 2017, 2017 CPD ¶ 121 at 3. To be reasonable, and thus valid, an interpretation must be consistent with such a reading. *Crew Training Int'l, Inc.*, B-414126, Feb. 7, 2017, 2017 CPD ¶ 53 at 4.

Here, we disagree with Polaris. The terms of the solicitation did not prohibit offerors from including in their technical proposals information on a specified percentage of premium pay to be added to a labor rate where that information did not include the actual labor rate. In that connection, without the context of the actual labor rate to be paid employees, the percentage of pay is not pricing information, but rather an element of LMR's recruiting and retention approach. As a result, based on the terms of this solicitation, we find that offerors could reasonably expect to discuss their compensation strategies within their technical proposals. Accordingly, we find that NGA had no obligation to disqualify LMR for including in its technical proposal information about a [DELETED] percent premium added to its labor rates.

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<sup>6</sup> The parties disagree over whether the Q&As were incorporated into the terms of the RFP. Our Office has previously found that information disseminated during the course of a procurement in writing, signed by the contracting officer, and provided to all offerors, contains all of the essential elements of an amendment and is sufficient to operate as such. *Energy Eng'g & Consulting Servs., LLC*, B-407352, Dec. 21, 2012, 2012 CPD ¶ 353 at 3. Here, the Q&As were in writing, available to all offerors, and were validated by the contracting officer. Polaris AR, Tab A.8, Q&As. Accordingly, we find that the Q&As were incorporated into the solicitation.

Further, we find reasonable the agency's decision to consider the [DELETED] percent pay premium in evaluating LMR's proposal under the retention subfactor. As explained by the agency, LMR's reference to a [DELETED] percent premium was absent any pricing context. That is, while LMR stated that it offers premium pay in the context of its employee compensation strategy, it did not detail the actual labor rates. Evaluating this aspect of LMR's approach in a favorable manner was within the agency's broad discretion. The protester's disagreement with the agency's evaluation conclusion does not provide a basis to sustain the protest. *Jacobs Tech., Inc., supra*. Accordingly, this protest ground is denied.

#### The Instructions for the Retention Subfactor were not Ambiguous

Polaris argues in the alternative that the solicitation's instructions were latently ambiguous. Polaris Protest at 24-26; Polaris Comments & Supp. Protest at 10-12. According to the protester, if the agency expected offerors to include in their technical proposals details about the specific amount of premium pay offered to attract cleared personnel, the agency should clarify this expectation and allow revised proposals. *Id.* As discussed below, we disagree.

Polaris argues that the RFP's instructions on the retention subfactor along with Q&A Nos. 15 and 53 created a latent ambiguity regarding what information was allowed to be included within offerors' technical proposals. *Id.* Specifically, the protester interprets Q&A No. 53--which confirms that rates, values or amounts related to any compensation were not to be included in technical proposals--to mean that offerors were barred from including "concrete numbers" representing specific labor rates or other pricing information in their compensation approaches. *Id.*

Based on its interpretation of the solicitation, Polaris contends that including in its technical proposal details on increased pay by a certain percent was not allowed. According to Polaris, if not for this alleged ambiguity, it would have included in its technical proposal more details on its own approach to premium pay for cleared personnel. Polaris Protest at 25 ("Polaris understood the RFP as requiring offerors to describe their approach to compensation and benefits without providing concrete numbers"), at 26 ("But for this latent ambiguity, Polaris would have included [its proposed percentage of clearance] premium in its technical proposal").

The agency argues that the solicitation was unambiguous. Polaris COS/MOL at 22-25. The agency's interpretation of the language in question is that "the requirement to avoid pricing information in the technical volume did not extend to non-rate-specific information used to illustrate the offeror's approach to compensating employees in a manner that attracts and retains employees[.]" *Id.* at 23. In other words, an offeror was free to include details on increased pay by a specified percentage so long as its technical proposal did not include actual labor rates. *See id.*

As discussed above, we resolve questions of solicitation interpretation by reading the solicitation as a whole and in a manner that gives effect to all provisions. *Anders Constr., Inc., supra*. To be reasonable, and thus valid, an interpretation must be consistent with such a reading. *Crew Training Int'l, Inc., supra*. An ambiguity exists where two or more reasonable interpretations of the solicitation are possible. *TriWest Healthcare All. Corp., B-415222.3 et al., May 2, 2019, 2019 CPD ¶ 152 at 12*. If the solicitation language is unambiguous, our inquiry ceases. *Id.*

The relevant language of the solicitation stated: “The Offeror shall present their comprehensive strategy to recruit cleared and qualified personnel, retain those personnel and execute successful turnover management. The Offeror’s response should not include specific labor rates.” RFP at 6. Regarding the evaluation of proposals, the relevant section of the RFP stated: “This standard is met when the Offeror proposes a competitive compensation, incentive and benefits package and demonstrates the ability to recruit and retain personnel capable of meeting the ESAS II requirements.” *Id.* at 20.

Based on the plain terms of the solicitation, we conclude that Polaris’s offered interpretation is not reasonable. Nothing in the plain language of the solicitation barred offerors from including in their technical proposals information about increasing labor rates by a specified percentage to account for security clearances where the technical proposal did not otherwise include actual labor rates. See RFP at 6, 20. We consider such information on premium pay for cleared personnel to be reasonably captured by the solicitation’s instructions to present a “comprehensive strategy to recruit cleared and qualified personnel[.]” See *id.* at 6. While the RFP expressly forbid the inclusion of specific labor rates in technical proposals, it did not forbid offerors from stating that they increase labor rates by a specified percent as part of a strategy to recruit and retain cleared personnel. To conclude otherwise would run afoul of the plain terms of the solicitation instructing offerors to detail their comprehensive strategy to recruiting and retaining such personnel.

Moreover, we do not think that the language of Q&A Nos. 15 and 53 expressly barred offerors from stating that they would increase labor rates by a specified percentage where that statement did not discuss actual labor rates. Rather, the Q&As make clear that offerors should “focus on their strategy and should not include specific rates or other pricing information.” Polaris AR, Tab A.8, Q&As at Questions 15, 53.

While Polaris makes much of Q&A No. 53’s confirmation that technical proposals were not to include rates, values or amounts related to any compensation, we find that Polaris takes this language out of context. In this regard, the plain language of the RFP’s instructions and the agency’s answer in Q&A No. 53 expressly prohibited the inclusion of actual labor rates, but did not prohibit the type of information involving compensation strategy which Polaris would see barred. To bar such information would run afoul of both the RFP’s instruction to “present a comprehensive strategy” to recruiting and retaining cleared employees, and the Q&A’s instruction to focus on strategy. We find the agency’s interpretation of the solicitation to be the lone

reasonable interpretation. Thus, the RFP was not ambiguous. *TriWest Healthcare All. Corp.*, *supra*. This protest ground is denied.<sup>7</sup>

#### No Basis to Sustain Other Challenges under the Retention Subfactor

Zolon PCS II and Polaris challenge the agency's evaluation of both awardees' proposals under the retention subfactor. First, the protesters argue that they were treated unequally as compared with Bailey regarding the evaluation of the competing compensation plans. Zolon PCS II Comments & Supp. Protest at 29-30; Zolon PCS II Supp. Comments at 35-37; Polaris Comments & Supp. Protest at 19-20; Polaris Supp. Comments at 8-11. Second, the protesters challenge an aspect of the SSDD which favorably credits LMR for proposing a [DELETED] percent pay premium for "cleared personnel at various clearance levels." Zolon PCS II AR, Tab D.1, SSDD at 10 (LMR vs. Zolon PCS II), at 8 (LMR vs. Polaris). As discussed below, we deny these challenges.

First addressing the challenges involving Bailey's proposal, Zolon PCS II argues that the "single most important" reason for the agency's more favorable evaluation of Bailey's proposal as compared with Zolon PCS II's proposal was that Bailey proposed premium pay for employees with security clearances but Zolon PCS II did not. Zolon PCS II Comments & Supp. Protest at 26-27, 29. Zolon PCS II claims that the language in its proposal stating that it offers "[c]ompetitive salaries based on market pay data, local and national, surveys, and benchmarking" was substantively the same thing as Bailey's proposed approach to offer compensation "commensurate with local market conditions, clearance requirements, and required skillsets[.]" *Id.* at 31. According to the protester, this evidences disparate treatment because it allegedly proposed a very similar approach as compared with Bailey but Bailey's approach was given a major strength while Zolon PCS II's was not. *Id.* at 29-30.

The agency argues that the differences in the evaluation results were based on the substantive differences in the proposals. Zolon PCS II Supp. COS/MOL at 18-20. The agency's position is that Bailey's proposal "actually stated that its compensation plan factors in 'clearance requirements' [while Zolon PCS II's] did no such thing[.]" *Id.* at 19. On this point, we agree with the agency.

Here, the record supports a finding that the different evaluation results were the product of different technical approaches. Where Zolon PCS II's proposed compensation was

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<sup>7</sup> To the extent Polaris suggests that the RFP barred offerors from stating in their technical proposals that they offer premium pay in some fashion even without reference to a specified increase in the labor rate, we find this to be an unreasonable interpretation of the solicitation. Nothing in the plain terms of the RFP supports such a reading. Thus, if Polaris wanted to propose a technical approach offering premium pay for cleared personnel, nothing in the terms of the RFP prevented Polaris from detailing such an approach. It is an offeror's responsibility to submit a well-written proposal. See *e.g.*, *Undercover Training, LLC*, B-418170, Jan. 9, 2020, 2020 CPD ¶ 25 at 3-5.

based on “market pay data, local and national, surveys, and benchmarking[,]” Bailey’s proposed compensation included “salaries and bonuses” based on multiple factors--one factor being “clearance requirements[.]” *Compare* Zolon PCS II AR, Tab B.1.a, Zolon PCS II Step 1 Proposal at 9 (Zolon PCS II’s compensation), *with* Zolon PCS II AR, Tab B.2.a, Bailey Step 1 Proposal at 4 (Bailey’s compensation). Thus, Bailey’s proposal expressly stated that clearance requirements were factored into salaries and bonuses while Zolon PCS II’s description of its compensation did not mention how or whether clearances were taken into consideration. Accordingly, we find no basis to conclude that the agency engaged in an unequal evaluation in this area. Assessing Bailey’s proposal with a major strength for that firm’s proposed compensation was within the agency’s discretion.

Next, Polaris argues that it was treated unequally by being “penalized” for not including details on a proposed level of premium pay while Bailey was not similarly penalized for its approach to premium pay which, according to Polaris, also lacked detail. Polaris Comments & Supp. Protest at 19-20. Although Polaris was not assessed a weakness for a lack of detail regarding premium pay, Polaris contends that the SSA’s separate comparisons of LMR’s proposal with Polaris’s and Bailey’s proposals under the non-price factors demonstrate that Polaris was “penalized” for this lack of detail. *Id.* In comparing LMR to Polaris, the SSA stated the following: “The compensation plan provided by LMR is more robust [than] the plan provided by Polaris in that the Polaris[] plan does not provide details on the amount of the clearance premium.” Polaris AR, Tab D.1, SSDD at 8. Polaris then cites to the SSA’s comparison of Bailey’s proposal with LMR’s proposal (*i.e.*, the comparison of the two eventual awardees for the first IDIQ contract). In that comparison, the SSA did not specifically note Bailey’s alleged lack of detail on its approach to premium compensation for cleared personnel. *See id.* at 6; Polaris Comments & Supp. Protest at 19-20. According to Polaris, this evidences disparate treatment.

The agency argues that the SSA’s non-price comparison of LMR’s proposal with Bailey’s proposal was irrelevant for the purposes of conducting a comparison between LMR’s proposal and Polaris’s proposal. Polaris Supp. COS/MOL at 4-5. The agency states that when comparing LMR’s proposal with Bailey’s proposal under the technical/management factor, it evaluated LMR’s proposal as superior to Bailey’s proposal based on certain discriminating factors falling under parts of the solicitation not relevant to the compensation approaches. *Id.* at 5. Essentially, the agency states that there were sufficient discriminating factors between LMR’s approach and Bailey’s approach to render insignificant any issues regarding Bailey’s compensation approach. *See id.* In contrast, the agency states that when comparing LMR’s proposal to Polaris’s proposal under the technical/management factor, LMR’s compensation approach was a discriminating factor between those two proposals. *Id.* In any event, the agency argues that its comparison of LMR’s proposal with Bailey’s proposal was reasonable and included sufficient rationale to justify that particular evaluation conclusion. *Id.* We agree.

Source selection decisions must be sufficiently documented, and must include the rationale for any business judgments and tradeoffs made or relied upon by the SSA. *Airbus Helicopters, Inc.*, B-418444, B-418444.2, May 12, 2020, 2020 CPD ¶ 255 at 22. However, there is no need for extensive documentation of every consideration factored into a tradeoff decision. *Id.* The documentation must be sufficient to establish that the agency was aware of the relative merits and costs of the competing proposals and that the source selection was reasonably based. *Id.*

Polaris has not provided our Office with a basis on which to conclude that the agency engaged in disparate treatment. We agree with the agency's contention that the SSA's comparison of LMR's proposal with Bailey's proposal was irrelevant for the purpose of comparing LMR's proposal with Polaris's proposal. The agency's decision to rate LMR's proposal as superior to Bailey's proposal under the technical/management factor was based on distinguishing factors under the retention history component of the retention subfactor, and the program management and quality control subfactor. See Polaris AR, Tab D.1, SSDD at 6. In contrast, the agency's decision to rate LMR's proposal as superior to Polaris's proposal under the same factor was based in part on the level of detail regarding clearance premiums under the compensation, incentives, and benefits approach component of the retention subfactor. *Id.* at 8-9. To the extent Polaris challenges the substance of the comparisons, we find that the SSA's documentation sufficiently establishes the relative and distinct merits of the proposals and that the comparisons were reasonably based. See *Airbus Helicopters, Inc.*, *supra*. Accordingly, this protest ground is denied.

Further, we disagree with Polaris's complaint that it was "penalized" by the agency. As noted above, Polaris was not assessed a weakness for lack of detail regarding compensation; in fact, the agency recognized Polaris's compensation plan as a minor strength and rated Polaris's proposal as good under the retention subfactor. Polaris AR, Tab C.1.a, Polaris Step 1 Evaluation at 2-3. We fail to see how earning these positive marks constituted a penalty.

As to the evaluation of LMR's proposal, Zolon PCS II and Polaris each raise essentially the same challenge. The protesters argue that the SSA unreasonably considered LMR's proposed premium pay as applying only to personnel with clearances. Zolon PCS II Comments & Supp. Protest at 31-32; Zolon PCS II Supp. Comments at 37-39; Polaris Comments & Supp. Protest at 17-19; Polaris Supp. Comments at 6-8. Relevant here, LMR's proposal stated:

We utilized labor rates from the [ERI] database of wage surveys. We also utilized the [BLS] wage data, and other publicly available sources for difference labor categories. . . . To arrive at the final rates for our independent research, we utilized rates from the [DELETED] percentile and applied a premium of [DELETED] [percent] to account for clearances and density of available candidates by geographic region.

Polaris AR, Tab B.3.a, LMR Step 1 Proposal at 6-7.

The protesters focus on language in the SSDD crediting LMR's compensation plan for providing "details on how it calculated a [DELETED] [percent] premium to account for cleared personnel at various clearance levels." Polaris AR, Tab D.1, SSDD at 8, 10. The protesters contend that it was unreasonable for the SSA to attribute the [DELETED] percent premium solely to accounting for cleared personnel as LMR's proposal indicated that a portion of the [DELETED] percent is also allocated to account for "density of available candidates by geographic region." Zolon PCS II Comments & Supp. Protest at 31-32; Polaris Comments & Supp. Protest at 17-19. In other words, the protesters argue that LMR's premium pay was divided between clearances and density of candidates by geographic region, and therefore it was unreasonable for the SSA to view the entire [DELETED] percent as applying only to personnel with clearances.

The agency defends the SSA's analysis of LMR's proposal as reasonable. Zolon PCS II Supp. COS/MOL at 20-22; Polaris Supp. COS/MOL at 2-4. According to the agency, the SSA reasonably interpreted LMR's proposal as accounting for the geographic location of candidates in the labor rate and that the [DELETED] percent premium would be added to the appropriate labor rate for candidates holding security clearances.<sup>8</sup> *Id.* In this regard, the agency states that it understood the publicly available sources used to build LMR's labor rates as accounting for geographic location in their data. Zolon PCS II Supp. COS/MOL at 20-21. The agency argues that because it understood LMR's labor rates as accounting for geographic location, the SSA reasonably interpreted the [DELETED] percent increase to apply only to employees with security clearances. *Id.* at 22.

We find the agency's explanation of this aspect of its selection decision to be credible and consistent with the contemporaneous record. *Boeing Sikorsky Aircraft Support, supra; Remington Arms Co., Inc., supra.* Based on our review of the record, the agency's evaluation of LMR's proposed premium pay was reasonably based on the information contained in LMR's proposal. In this regard, LMR's proposal contained language which reasonably indicated that geographic location was accounted for within its labor rates and that the [DELETED] percent premium would apply to cleared personnel. See Zolon PCS II AR, Tab B.3.a, LMR Step 1 Proposal at 6 ("We prepared our total compensation plan through local market research in each of the geographic metropolitan areas specified in the RFP"); *id.* (listing as separate considerations compensation surveys built using ERI and BLS data, and LMR's experience providing cleared personnel). To the extent the protesters disagree with the SSA's preference for LMR's approach to employee compensation, we find that this represents disagreement with the agency's evaluation conclusions which, by itself, is not sufficient to sustain a protest. *Jacobs Tech., Inc., supra.* As such, this protest ground is denied.

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<sup>8</sup> For its part, LMR confirms the agency's reading of its proposal. LMR explains that the relevant labor rate would depend on the employee's geographic area; for employees holding security clearances, the geographically dependent labor rate would then be increased by [DELETED] percent. LMR Supp. Comments in Polaris Matter at 1-2.

## Challenges under the Transition and Staffing Subfactor

Zolon PCS and Polaris challenge NGA's evaluation of proposals under the transition and staffing subfactor of the technical/management factor. The protesters argue that the agency conducted an unequal evaluation. As discussed below, we deny these challenges.

The transition and staffing subfactor of the technical/management factor was evaluated during phase two of the competition. RFP at 5. Offerors were instructed to address their approach to transition and staffing, and demonstrate their understanding of the ESAS-II requirements. *Id.* at 14. Under the first component of this subfactor, offerors were to submit a transition plan in accordance with section 3.1.2 of the SOW. *Id.*

That section of the SOW read:

A Post-Award Kickoff meeting will be conducted with the Government and Contractor ten (10) business days after award to discuss the Transition Plan and associated activities. The Contractor timeline for transition shall be within 60 days of this meeting. For transition onto this effort, it is important to note that this work is currently being performed at NGA under ESAS. As such, it is possible that, following award of this task order, the Government will provide additional transition needs/timelines to ensure a reasonable transition occurs with minimal impacts to the Agency's administrative support to the mission, which will likely be driven by availability of funding and may require a phased ramp-up of support. The Government retains the final authority to dictate transition priorities.

For transition of this effort, the Contractor shall provide a transition plan that describes its approach to hand off work and associated products from each outgoing Contractor person to a replacement. This replacement could be the Government staff or another Contractor from a different contract. The plan shall account for the complete turnover of work in a manner that minimizes disruption to customer operations.

Zolon PCS II AR, Tab A.1.b, SOW at 4 (Section 3.1.2, Transition).

The RFP explained that the evaluation standard for the transition plan component of the subfactor would be met when:

the Offeror proposes a transition strategy that demonstrates an understanding of the challenges of transitioning at the beginning of contract performance (phase-in) and at the end of contract performance (phase-out), to include coordination with other Contractor teams; and that the Offeror has a logical unified action plan to meet the Government requirements during transition periods.



RFP at 25.

As discussed below, both protesters challenge the agency's evaluation of proposals under the transition and staffing subfactor. We first address Zolon PCS II's challenges, and then Bailey's challenges. As explained below, we deny these protest grounds.

#### Zolon PCS II Fails to Demonstrate Disparate Treatment

Under the transition and staffing subfactor, Zolon PCS II earned a rating of good based on four major strengths and three minor strengths. Zolon PCS II AR, Tab D.1, SSDD at 5. In contrast, LMR and Bailey were each rated as outstanding. *Id.* LMR's rating was based on one significant strength, five major strengths, and one minor strength. *Id.* Bailey's rating was based on one significant strength and six major strengths. *Id.*

At issue here is the manner in which the SSA cited aspects of the significant strengths found in the awardees' proposals when comparing the proposed transition approaches. Zolon PCS II claims that the SSA's analysis was unequal for finding these aspects of the awardees' proposals as discriminators because Zolon PCS II offered, what it contends are, substantially similar approaches to the requirements. Zolon PCS II Protest at 30-34; Zolon PCS II Comments & Supp. Protest at 33-36. As discussed below, we find that the protester fails to demonstrate disparate treatment.

Relevant here, as part of its approach to incumbent retention, LMR proposed to offer incumbent employees "an incentive bonus to transition to Team LMR. The \$[DELETED] transition bonus is payable in two increments[.] . . . For incumbent Leads, [LMR] [DELETED] this amount." Zolon PCS II AR, Tab B.3.b, LMR Volume 3 Proposal at 4 (emphasis omitted). LMR also proposed to conduct transition status meetings which would include "[DELETED] transition status teleconferences among [LMR's] internal transition team and with NGA customers[.]" *Id.* at 3.

Regarding Bailey's approach to incumbent retention, the firm proposed a "retention bonus plan for current personnel that is paid in three parts[.] . . . Team [Bailey] will implement follow-on retention incentives throughout the [period of performance] to minimize turnover." Zolon PCS II AR, Tab B.2.b, Bailey Volume 3 Proposal at 3.

In contrast, Zolon PCS II offered an incumbent retention approach which included [DELETED], [DELETED], and [DELETED]. See Zolon PCS II AR, Tab B.1.c, Zolon PCS Volume 3 Proposal at 5-6. Zolon PCS II's approach did not specifically mention cash-based incentives to retain incumbent personnel. See *id.*

LMR and Bailey each earned a significant strength for their approaches to the transition and staffing subfactor. Zolon PCS II AR, Tab C.3.c, LMR Step 2 Evaluation at 3-4; Zolon PCS II AR, Tab C.2.c, Baily Step 2 Evaluation at 3-4. In contrast, Zolon PCS II earned a major strength for its approach. Zolon PCS II AR, Tab C.1.c, Zolon PCS II Step 2 Evaluation at 3.

In conducting the non-price comparison between Zolon PCS II and LMR, the SSA found that LMR's approach was "significantly advantageous and comprehensive[.]" Zolon PCS II AR, Tab D.1, SSDD at 10. In comparing the proposals, the SSA cited as a distinguishing factor LMR's cash-based incentive bonuses for incumbents and "[DELETED] [teleconferences] with NGA to discuss transition status[.]" *Id.*

The SSA also found Bailey's approach "significantly advantageous and comprehensive" as compared with Zolon PCS II's approach. *Id.* at 16. In comparing the proposals, the SSA cited as distinguishing factors Bailey's cash-based incentive bonus plan for incumbents, its "effective communication strategy," and its "phased approach[.]" *Id.*

Zolon PCS II disputes the aspects of the awardees' proposals which the SSA found as distinguishing factors.<sup>9</sup> According to the protester, NGA "recognized strengths in the proposals of LMR and [Bailey] but failed to recognize merit in [Zolon PCS II's] proposal for similar positive characteristics[.]" Zolon PCS II Protest at 34. The agency argues that the different evaluation results were the product of substantively different proposals. Zolon PCS II COS/MOL at 25-30. We find no merit to this challenge.

Zolon PCS II first argues that the SSA's citation to LMR's incentive bonuses for incumbent personnel demonstrates a disparate evaluation. Zolon PCS II Protest at 33-34; Zolon PCS II Comments & Supp. Protest at 34-36. The protester contends that its own, allegedly similar, approach offering "competitive salaries to capture incumbents" should have been found comparable to LMR's approach. Zolon PCS II Comments & Supp. Protest at 34.

In response, the agency argues that this ground fails to demonstrate disparate treatment. NGA contends that it was reasonable to credit LMR for offering bonuses to retain incumbents while not crediting Zolon PCS II in a similar manner because Zolon PCS II's proposal "never discusses the use of bonuses to incentivize incumbent employees." Zolon PCS II COS/MOL at 28. In other words, the agency argues that the competing approaches were substantively different. Based on our review of the record, we agree.

The record shows that where Zolon PCS II's incumbent retention approach involved [DELETED], [DELETED], and [DELETED], LMR's approach specifically included cash payouts to incumbents. The record therefore demonstrates that both firms offered substantively distinguishable approaches to retain incumbent personnel, and supports

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<sup>9</sup> Zolon PCS II initially cited LMR's proposed [DELETED] status calls with NGA as a basis for its disparate treatment argument. Zolon PCS II Protest at 33. NGA provided a detailed response to this allegation. Zolon PCS II COS/MOL at 26-27. Zolon PCS II did not meaningfully pursue this aspect of its protest in its comments on the agency report. See Zolon PCS II Comments & Supp. Protest at 33-36. Accordingly, we deem this aspect of its protest abandoned and will not address it further. 4 C.F.R. § 21.3(i)(3) (GAO will dismiss any protest allegation where the agency's report responds to the allegation but the protester's comments fail to address that response.).

the agency's position that the different evaluation results were the product of substantially different proposals. Accordingly, this allegation does not provide us a basis to sustain the protest.

Zolon PCS II next argues that the SSA's citation to Bailey's cash-based incentive bonus plan for incumbents evidences disparate treatment. See Zolon PCS II Protest at 30-34; Zolon PCS II Comments & Supp. Protest at 35. The agency argues that this fails to demonstrate disparate treatment because the competing approaches were substantively different. Zolon PCS II COS/MOL at 28. Based on our review of the record, we agree with the agency.

The protester claims that its "incumbent capture plan comprised of [DELETED], [DELETED], and [DELETED]" was substantively similar to Bailey's cash-based incentive bonus plan for incumbents. See Zolon PCS II Comments & Supp. Protest at 35-36. However, unlike Zolon PCS II's proposal, Bailey specifically identified a retention bonus plan for incumbents that would be paid in three parts. Thus, the record again supports the agency's position that the different evaluation results were the product of substantially different proposals.<sup>10</sup>

#### Polaris Fails to Demonstrate Disparate Treatment

Polaris argues that the agency engaged in disparate treatment by favorably crediting Bailey for its communications strategy and phased transition approach while failing to give Polaris equal credit for proposing similar features.<sup>11</sup> Polaris Protest at 31-33;

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<sup>10</sup> Zolon PCS II also alleges disparate treatment under the program management and quality control subfactor. Zolon PCS II Protest at 34-36; Zolon PCS II Comments & Supp. Protest at 36-38. This subfactor was broken into two components: program management approach; and quality control plan. RFP at 14-15. The protester notes that LMR was credited by the SSA with proposing [DELETED] (Method A) tools under the program management approach component; however, the protester argues this was unreasonable because its own proposal discussed Method A under the quality control plan component and did not receive similar credit. We have reviewed this challenge and find that Zolon PCS II fails to demonstrate disparate treatment. While LMR's proposal discussed using Method A to meet the requirements of the program management approach component, Zolon PCS II's proposal did not. *Compare* Zolon PCS II AR, Tab B.3.b, LMR Technical Proposal at 8 (discussion of using Method A tools and techniques), *with* Zolon PCS II AR, Tab B.1.c, Zolon PCS II Technical Proposal at 10-11 (no discussion of Method A under program management approach component). In this regard, Zolon PCS II discussed using Method A under its quality control approach and not its program management approach as did LMR; the offerors proposed differently. We therefore find that the offerors were not treated unequally here.

<sup>11</sup> Polaris withdrew certain aspects of this protest ground involving challenges to the agency's evaluation of LMR's proposal. Polaris Comments & Supp. Protest at 12 n.6.

Polaris Comments & Supp. Protest at 12-16. According to the protester, it offered a similar communications strategy and phased transition approach as compared with Bailey but did not receive equal evaluation results. Polaris Comments & Supp. Protest at 15-16.

The agency defends its evaluation as reasonable. In short, the agency argues that compared with Polaris's proposal, Bailey's proposal was more comprehensive and better written which drove the different evaluation results. Polaris COS/MOL at 33-35. Below, we discuss the relevant portions of the proposals and conclude that the record supports the agency's position that the different evaluations were the result of differences in the approaches.

Relevant to its communications strategy, Bailey's proposal stated that during the phase-in period, "[Bailey] will: 1) coordinate and conduct [DELETED] [teleconferences]; 2) [conduct] [DELETED] email transition updates including an [DELETED], . . . ; 3) [conduct] [DELETED] in-person meetings . . . ; 4) [and issue] responses to Government inquiries within [DELETED]." Polaris AR, Tab B.2.b, Bailey Volume 3 Proposal at 4-5. Regarding its approach to transition activities, Bailey's proposal detailed what it described as a "phased approach[.]" *Id.* at 6-7. Bailey's proposal stated that its phased approach included distinct phases and distinct activities to be completed during each phase. *Id.* For example, "phase 1" would be initiated upon [DELETED] and would include activities such as [DELETED] and [DELETED]. *Id.* The final phase, [DELETED], would include assuming full contract operations. *Id.*

In contrast, Polaris's communications strategy was detailed by a table with four columns and six rows. Polaris AR, Tab B.1.b, Polaris Volume 3 Proposal at 13. This table described Polaris's communications strategy by event type, host, audience, and outcome. *Id.* For example, the "Daily Workforce Update" would be a teleconference directed at the incumbent workforce to discuss the transition status and answer questions. *Id.* Other communication events included a daily meeting with Polaris subcontractors, weekly updates to the program management office, and stakeholder meetings. *Id.* For Polaris's approach to the transition process, its proposal detailed various phase-in activities and their prospective start and completion dates. *Id.* at 4. For example, communicating with the Team Polaris project manager was scheduled to start before day 0 and take place on a weekly basis during the entire phase-in period. *Id.*

Bailey's communications strategy and phased approach were recognized as two aspects of a multifaceted significant strength, while Polaris's communications strategy was recognized as one aspect of a multifaceted minor strength. Polaris AR, Tab C.2.b, Bailey Step 2 Evaluation at 3; Polaris AR, Tab C.1.b, Polaris Step 2 Evaluation at 3. In conducting the non-price comparison between Bailey's proposal and Polaris's proposal, the SSA found that Bailey's transition plan provided the agency with "more assurance" than Polaris's approach. Polaris AR, Tab D.1, SSDD at 15. In comparing the approaches, the SSA specifically cited Bailey's "effective communication strategy" and its phased approach. *Id.*

Polaris argues that the SSA's citations to Bailey's communications strategy and its phased approach evidence disparate treatment. Polaris Protest at 32-33; Polaris Comments & Supp. Protest at 12-16. In this regard, the protester contends that its communications strategy and Bailey's communications strategy were substantively indistinguishable, and that it also proposed "a similarly phased approach[.]" Polaris Comments & Supp. Protest at 12-16.

In response, NGA contends that each offeror's communications strategy was credited as part of a strength in some fashion, but Bailey "presented a more comprehensive and advantageous approach than Polaris did." Polaris COS/MOL at 33. The agency further argues that Bailey's phased approach was an aspect unique to Bailey and that Polaris's proposal did not contain an equivalent approach. *Id.* at 35.

Based on our review of the record, we find reasonable the agency's position that the different evaluation results were based on the substantive differences in the proposals. The record supports the agency's position that both offerors proposed communications strategies but they did so in distinguishable manners. As noted above, Bailey's approach included [DELETED] teleconferences and email transition updates, [DELETED] in-person meetings and committed to responding to government inquiries within [DELETED]. Polaris AR, Tab B.2.b, Bailey Volume 3 Proposal at 4-5. In contrast, Polaris's approach focused on specific events such as daily meetings with subcontractors, weekly updates to the program management office, and stakeholder meetings. Polaris AR, Tab B.1.b, Polaris Volume 3 Proposal at 13-14. Based on our review of the record, we agree with the agency that the evaluations were based on differences between the proposals; therefore, this aspect of Polaris's challenge is denied.

We also find no basis to conclude that the offerors were treated unequally regarding Bailey's phased approach. Based on our review of the record, we find reasonable the agency's explanation that Bailey's phased approach is substantively distinguishable from anything included in Polaris's proposal. Bailey's phased approach included categorizing activities relevant to the transition effort into distinct phases. Polaris AR, Tab B.2.b, Bailey Volume 3 Proposal at 6-7. In contrast, Polaris's proposal included a list of activities relevant to the transition effort but described its approach in terms of what activities would happen by certain days. Polaris AR, Tab B.1.b, Polaris Volume 3 Proposal at 4. We conclude that the differences in evaluation results were based on substantively different approaches to the transition effort. Accordingly, this aspect of Polaris's challenge is denied.

#### Challenges under the Past Performance Factor

Zolon PCS II raises multiple challenges to the agency's evaluation of proposals under the past performance factor. First, the protester argues that the evaluation of its own past performance was unreasonable. Second, the protester argues that the evaluation of LMR's past performance was unreasonable. Finally, the protester argues that it was

treated unequally under the past performance factor as compared with Bailey. As discussed below, we deny these protest grounds.

An agency's evaluation of past performance--which includes its consideration of the relevance, scope, and significance of an offeror's past performance--is a matter of discretion which we will not disturb unless the assessment is unreasonable or inconsistent with the solicitation criteria. *Teya Enters., LLC*, B-420907, Oct. 24, 2022, 2022 CPD ¶ 266 at 3-4. When a protester challenges an agency's past performance evaluation, we will review the evaluation to determine if it was fair, reasonable, consistent with the solicitation's evaluation criteria, and with applicable statutes and regulations. *Id.*; *Halbert Constr. Co., Inc.*, B-413213, Sept. 8, 2016, 2016 CPD ¶ 254 at 7. The nature of a past performance evaluation is subjective; we will not substitute our judgment for reasonably based evaluation ratings. *Noble Supply & Logistics, Inc.*, B-417494.3, Aug. 7, 2020, 2020 CPD ¶ 267 at 4-5.

The past performance factor was considered under phase two of the competition and was weighted as "slightly less important" than the technical/management factor. RFP at 5, 15-16, 22. The solicitation explained that the intent of the past performance factor was to identify how well an offeror performed on recent and relevant contracts in order to assess the probability of the offeror meeting the ESAS-II requirements. *Id.* at 15, 26. The SOW framed the ESAS-II requirements in terms of "professional administrative support services" and contemplated that ESAS-II professionals would fall into one of two labor categories: executive assistants or administrative assistants. Zolon PCS II AR, Tab A.1.b, SOW at 2, 7, 20-24.

Offerors were instructed to submit three to five examples of recent and relevant work performed by either the offeror or a significant subcontractor. RFP at 15, 26. The solicitation defined a significant subcontractor as a subcontractor proposed to perform at least 20 percent of the total proposed ESAS-II contract value. *Id.* Relevant work was defined as work "of a similar size, scope, and nature to the ESAS-II requirements." *Id.*

The solicitation further advised that past performance information "known from sources other than those in or resulting from the proposal" may be considered as part of the past performance evaluation. *Id.* at 26. This could include conducting interviews with individuals relevant to any past performance sources. *Id.* Any such interviews would be monitored and controlled by the contracting officer. *Id.*

The solicitation contemplated evaluating past performance in accordance with FAR part 15 procedures considering recency, relevancy, and quality. *Id.* (citing FAR 15.305(a)(2)). The relevancy determination would include but was not limited to consideration of the offeror's or significant subcontractor's role on the proposed team, similarity of service/support, dollar value, complexity, availability/use of similarly certified staff, contract type, and the extent of subcontract/teaming. *Id.* at 27. Only past performance deemed very relevant, relevant, or somewhat relevant would be assessed for quality. *Id.* In instances where the agency found that an offeror did not have

sufficient relevant past performance, that offeror's past performance would be rated as neutral. *Id.*

Zolon PCS II submitted three past performance examples in response to the past performance factor. Zolon PCS II AR, Tab B.1.h, Zolon PCS II Master Project List. The agency concluded that one of Zolon PCS II's examples was somewhat relevant and two were not relevant. Zolon PCS II AR, Tab C.1.a, Zolon PCS II Past Performance Evaluation at 5. Ultimately, Zolon PCS II received a rating of neutral under the past performance factor based on the agency's conclusion that Zolon PCS II's past performance record did not include sufficient relevant experience to assess a positive or negative confidence rating. *Id.* at 7; Zolon PCS II AR, Tab D.1, SSDD at 5.

LMR submitted five past performance examples in response to the past performance factor. Zolon PCS II AR, Tab B.3.c, LMR Past Performance Volume at 7 (master project list). The agency concluded that two of LMR's examples were relevant, two were somewhat relevant, and one was not relevant. Zolon PCS II AR, Tab C.3.a, LMR Past Performance Evaluation at 5. Ultimately, LMR received a rating of satisfactory under the past performance factor. Zolon PCS II AR, Tab D.1, SSDD at 5.

Bailey submitted four past performance examples in response to the past performance factor. Zolon PCS II AR, Tab B.2.e, Bailey Master Project List. The agency concluded that one of Bailey's examples was very relevant, two were somewhat relevant, and one was not relevant. Zolon PCS II AR, Tab C.2.a, Bailey Past Performance Evaluation at 5. Ultimately, Bailey also received a rating of satisfactory under the past performance factor. Zolon PCS II AR, Tab D.1, SSDD at 5.

#### Evaluation of Zolon PCS II's Past Performance was Reasonable

Zolon PCS II argues that the agency's evaluation of its own past performance was unreasonable. According to the protester, it submitted relevant past performance which should have resulted in a positive rating, rather than a neutral rating, under the past performance factor. Zolon PCS II Protest at 39-44; Zolon PCS II Comments & Supp. Protest at 9-15; Zolon PCS II Supp. Comments at 2-9. As discussed below, we find no basis to sustain this protest ground.

Zolon PCS II's first past performance example was performed by Zolon Tech Inc., one of the two companies that makes up the joint venture Zolon PCS II. Zolon PCS II AR, Tab B.1.i, Zolon PCS II Project Summaries at 1-2. This work was performed for the State Department and involved information technology (IT) support services. *Id.* Zolon PCS II's proposal described the work as providing "comprehensive IT support services" and stated that the work included providing "administrative services in support of [] mission requirements." *Id.* at 1. Zolon PCS II's second example was also performed by Zolon Tech. Inc. *Id.* at 3-4. This work was performed for the Army on a contract called the Information Management IT Program. *Id.* Zolon PCS II's proposal described the work as including "[c]omprehensive administrative support[.]" *Id.* at 3.

In evaluating Zolon PCS II's past performance, the agency concluded that the two examples detailed above were not relevant. Zolon PCS II AR, Tab C.1.a, Zolon PCS II Past Performance Evaluation at 5. Regarding the work performed for the State Department, the agency concluded that this work was not relevant because it was not "similar in complexity or scope[.]" *Id.* The agency found that the "only administrative service on this contract [was] for limited customer help-desk software support, which [was] not the admin tasks required in ESAS II." *Id.* Regarding the work performed for the Army, the agency concluded that this work was not relevant because it was not "similar in complexity or scope[.]" *Id.* The agency found that this work did "touch on office support, [but] the scope [did] not encompass the admin tasks required in ESAS II." *Id.*

Zolon PCS II challenges the agency's evaluation of its two past performance examples found not relevant. The protester argues that the administrative tasks described in these past performance examples were similar to the tasks required for ESAS-II, and were also similar to tasks detailed in examples submitted by Bailey and LMR which were found relevant to some degree. Zolon PCS II Protest at 39-44; Zolon PCS II Comments & Supp. Protest at 9-15; Zolon PCS II Supp. Comments at 2-9. For example, some of the administrative tasks described in Zolon PCS II's proposal which the protester cites as demonstrating relevance to ESAS-II include: preparing reports, formatting memos, taking meeting minutes, and scheduling meetings. See Zolon PCS II Comments & Supp. Protest at 10, 13. The protester argues that its past performance examples should have been found relevant and that its overall past performance rating should have been positive rather than neutral. Zolon PCS II Protest at 44.

The agency defends its evaluation of Zolon PCS II's past performance as reasonable. The agency explains that the evaluators determined the State Department example was not relevant because it was "primarily directed at" providing IT support and "involved little or none of the scope and magnitude of effort and complexities" of the ESAS-II requirements. Zolon PCS II COS/MOL at 41. The agency explains that the evaluators determined the Army example was not relevant for similar reasons. *Id.* The agency further explains that the evaluators' "overall sense was that an IT-support-focused scope was not similar in scope to ESAS II" and that the evaluators "reserved relevancy to executive/administrative support contracts." Zolon PCS II Supp. COS/MOL at 4.

Based on our review of the record, we find no basis to question the agency's evaluation of Zolon PCS II's past performance. The record demonstrates that the evaluation findings and conclusions regarding the past performance examples were reasonably based and consistent with the solicitation's criteria.

In this regard, the solicitation explained that past performance would be evaluated to assess an offeror's probability of meeting the ESAS-II requirements, and explained that a contract was relevant if it was of "similar size, scope, and nature to the ESAS-II requirements." RFP at 15, 25. The SOW explained that the agency sought to obtain "quality, cleared, professional administrative support services" from firms with "a proven work history in the administrative career field[.]" Zolon PCS II AR, Tab A.1.b, SOW at 2.



The ESAS-II requirements were framed in terms of various administrative support functions performed by executive assistants or administrative assistants such as supporting management at all levels, maintaining executive calendars, and preparing memos and other correspondence. *Id.* at 20-23. Executive assistants would be required to “provide a combination of proven experience and expertise to independently support a customer office with a broad range of administrative activities . . . [and] independently accomplish demanding and challenging administrative tasks[.]” *Id.* at 7. Administrative assistants would be required to “accomplish more of the general or routine office administrative tasks . . . [and] have the expertise and qualifications to accomplish moderately complex administrative tasks with minimal guidance and assistance.” *Id.*

In evaluating Zolon PCS II’s past performance for the State Department, the agency found it not relevant because it primarily focused on IT support and was not focused on the type of administrative support required for ESAS-II. Zolon PCS II AR, Tab C.1.a, Zolon PCS II Past Performance Evaluation at 5. Based on our review of the record, we find the agency’s findings and conclusions to be reasonable. In this regard, Zolon PCS II framed this past performance example in terms of its IT support and largely includes discussion of tasks related to IT support. See Zolon PCS II AR, Tab B.1.i, Zolon PCS II Project Summaries at 1. Based on the terms of this solicitation, it was within the agency’s discretion to conclude that a past performance example largely focusing on IT support was not relevant to ESAS-II. Accordingly, we find that Zolon PCS II’s challenge here amounts to disagreement with the agency’s evaluation conclusions and does not provide us with a basis to sustain the protest.

As to Zolon PCS II’s past performance for the Army, the agency found it not relevant because it was focused on long-range IT policy and planning support, and did not encompass the administrative tasks required by ESAS-II. Zolon PCS II AR, Tab C.1.a, Zolon PCS II Past Performance Evaluation at 5. Here, the agency recognized that this example “does touch on office support,” but ultimately concluded that “the scope does not encompass the admin tasks required in ESAS II.” *Id.* Based on our review of the proposal compared with the SOW, we find that such a conclusion was within the agency’s discretion. Compare Zolon PCS II AR, Tab B.1.i, Zolon PCS II Project Summaries at 3, with Zolon PCS II AR, Tab A.1.b, SOW at 20-23 (duties of executive assistants and administrative assistants). We therefore deny this protest ground

Finally, to the extent Zolon PCS II argues that the agency’s evaluation of its own past performance was unreasonable based on the evaluation of the awardees’ past performance volumes, we find no basis to sustain the protest. As briefly discussed below, we find reasonable the agency’s position that the differences in past performance ratings were driven by the substantive differences in the competing proposals. See Zolon PCS II Supp. COS/MOL at 3-5.

In this regard, the agency concluded that the awardees’ past performance examples demonstrated past performance with executive/administrative support contracts,

whereas Zolon PCS II's past performance examples were focused on IT support. *Id.* For example, the agency evaluated one of Bailey's past performance examples as very relevant because it included "administrative support and [was] the predecessor contract to ESAS II and, as such, it offer[ed] a very similar scope and the same amount of complexity." Zolon PCS II AR, Tab C.2.a, Bailey Past Performance Evaluation at 6; see *also* Zolon PCS II AR, Tab B.2.f, Bailey Project Summaries at 4-5. As another example, LMR submitted a past performance example that the agency evaluated as relevant because the scope of that contract was for "administrative and executive assistants[.]" Zolon PCS II AR, Tab C.3.a, LMR Past Performance Evaluation at 6; see *also* Zolon PCS II AR, Tab B.3.c, LMR Past Performance Volume at 12-13. Based on our review of the record, the competing past performance proposals were substantively different. As such, this protest ground is denied.

#### No Basis to Sustain Challenge to LMR's Past Performance Rating

Zolon PCS II challenges the agency's evaluation of LMR's past performance. According to the protester, the evaluation of LMR's past performance was unreasonable because three of LMR's five past performance examples were allegedly not performed by LMR or LMR's significant subcontractors. Zolon PCS II Comments & Supp. Protest at 17-19; Zolon PCS II Supp. Comments at 14-21. As discussed below, we deny this protest ground.

The solicitation required offerors to submit three to five examples of past performance. RFP at 15. The solicitation stated that past performance examples were to come from work "performed by the Offeror or significant subcontractors[.]" *Id.* Significant subcontractors were defined as subcontractors proposed to perform at least 20 percent of the ESAS-II contract value. *Id.* The solicitation further stated that the evaluation of past performance would consider the offeror's past performance, which would include the past performance of significant subcontractors. *Id.* at 26.

LMR's proposal detailed an approach including two significant subcontractors, each proposed to perform up to 24 percent of the ESAS-II contract value. Zolon PCS II AR, Tab B.3.g, LMR Volume 2 Proposal at 1. One of these subcontractors was GAP Solutions, Inc. *Id.* In its past performance volume, LMR included five past performance examples involving GAP Solutions in some fashion. Zolon PCS II AR, Tab B.3.c, LMR Past Performance Volume at 7.

Zolon PCS II argues that the agency unreasonably evaluated LMR's past performance by attributing to LMR the past performance of firms not proposed to support ESAS-II. Zolon PCS II Comments & Supp. Protest at 17-18; Zolon PCS II Supp. Comments at 14-20. In raising this challenge, the protester focuses on three of LMR's past performance examples: (1) work performed for NGA; (2) work performed for the Foreign Services Institute (FSI); and (3) work performed for the Army. Zolon PCS II Supp. Comments at 17-18. The protester argues that LMR's proposal demonstrates that the firms that performed these contracts were not LMR (the offeror) or GAP Solutions (the significant subcontractor), but rather certain joint ventures not proposed

to support ESAS-II. *Id.*; Zolon PCS II Supp. Comments at 14-20. The protester argues that the agency unreasonably attributed to LMR the past performance of the joint ventures. Zolon PCS II Supp. Comments at 14-20.

The agency defends its consideration of LMR's past performance examples involving FSI and the Army as reasonable.<sup>12</sup> Zolon PCS II Supp. COS/MOL at 11. According to the agency, LMR's proposal clearly demonstrated that the relevant past performance examples involved performance by GAP Solutions, one of LMR's significant subcontractors for ESAS-II, and therefore the agency reasonably attributed the past performance of GAP Solutions to LMR for the purpose of evaluating past performance. *Id.* Based on our review of the record, we agree with the agency.

Based on the terms of the solicitation, the agency reasonably considered the work performed by GAP Solutions on the past performance examples involving FSI and the Army. Under the past performance factor, the solicitation allowed the agency to consider work performed by a significant subcontractor. RFP at 15, 26-27. GAP Solutions was one of LMR's significant subcontractors. Zolon PCS II AR, Tab B.3.g, LMR Volume 2 Proposal at 1. As discussed in more detail below, LMR's proposal detailed only the portion of work performed by GAP Solutions on the contracts awarded to the joint ventures.

First, LMR's proposal demonstrated that GAP Solutions, as the mentor partner of a joint venture, performed on the FSI contract. Zolon PCS II AR, Tab B.3.c, LMR Past Performance Volume at 10. LMR's proposal specified that all of the work detailed in the example "only reflected [GAP Solutions'] portion of employees, contract size, and actual work performed in [the] contract description." *Id.* at 11. The proposal further specified that the joint venture was not proposed to work on ESAS-II. *Id.* Accordingly, we find reasonable the agency's consideration of GAP Solutions' work on the FSI contract as detailed in LMR's past performance volume. Nothing in the plain terms of the solicitation prohibited such consideration. See RFP at 15, 26-27. The record reflects that this was an example of past performance performed by the significant subcontractor. See RFP at 15.

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<sup>12</sup> In defending its evaluation, the agency concedes that to the extent the NGA past performance example was considered, such consideration was in error. Zolon PCS II Supp. COS/MOL at 9-10. In this regard, the agency acknowledges that the performing entity was not listed as a member of LMR's proposed team for ESAS-II. *Id.* Nonetheless, the agency argues that such error was harmless because this past performance example was found not relevant and thus did not factor into the quality assessment or the overall confidence assessment. *Id.* (citing Zolon PCS II AR, Tab C.3.a., LMR Past Performance Evaluation at 5). Zolon PCS II does not contest the agency's assertion that the conceded error was harmless. See Zolon PCS II Supp. Comments at 14-20.

Next, LMR's proposal demonstrated that GAP Solutions, as the mentor partner of a joint venture, performed on the Army contract. Zolon PCS II AR, Tab B.3.c, LMR Past Performance Volume at 14-15. The proposal specified that all of the work detailed in the example "only reflected [GAP Solutions'] portion of employees, contract size, and actual work performed in [the] contract description." *Id.* at 15. The proposal further specified that the joint venture was not proposed to work on ESAS-II. *Id.* Like the FSI contract, we find reasonable the agency's consideration of GAP Solutions' work on the Army contract as detailed in LMR's past performance volume. This protest ground is denied.

#### Evaluation of Past Performance was not Disparate

Zolon PCS II argues that the agency's evaluation of its own past performance as compared with Bailey's past performance reflects disparate treatment. Zolon PCS II Comments & Supp. Protest at 15-17; Zolon PCS II Supp. Comments at 9-13. As discussed below, we find no basis to sustain this challenge.

Relevant here, the past performance factor contained three aspects: recency, relevancy, and quality. RFP at 26-27. The RFP explained that only recent past performance examples would be evaluated for relevancy, and only relevant examples would be evaluated for quality. *Id.* The quality aspect of the evaluation was broken into three components: technical, management, and cost/price. *Id.* at 27. The ultimate past performance confidence rating would be based upon the offeror's "overall record of recency, relevancy, and quality of performance." *Id.* at 27.

Zolon PCS II submitted three examples of past performance. Zolon PCS II AR, Tab C.1.a, Zolon PCS II Past Performance evaluation at 5. Only one of these examples was found relevant to some degree; the other two were found not relevant. *Id.* Accordingly, the agency did not evaluate for quality Zolon PCS II's past performance examples found not relevant. *Id.* at 6-7; see RFP at 27 ("Only past performance efforts that are assessed Very Relevant, Relevant, or Somewhat Relevant will be considered in the quality assessment.").

In contrast, Bailey submitted four past performance examples. Zolon PCS II AR, Tab C.2.a, Bailey Past Performance Evaluation at 5. One of these examples was found very relevant, two were found somewhat relevant, and one was found not relevant. *Id.* Accordingly, these three past performance examples were evaluated for quality. *Id.* at 7-10. Ultimately, as noted above, Zolon PCS II earned a rating of neutral under past performance while Bailey earned a rating of satisfactory. Zolon PCS II AR, Tab D.1, SSDD at 5.

Zolon PCS II contends that its proposal contained past performances examples demonstrating "stellar quality of performance" and argues that it was unreasonable for the agency to conclude that its performance record was insufficient to meaningfully assess a past performance confidence rating. Zolon PCS II Comments & Supp. Protest

at 15. Zolon PCS II cites to the agency's evaluation of Bailey's proposal as evidence of a disparate evaluation. *Id.* at 15-17.

In this regard, Zolon PCS II notes that Bailey's past performance volume did not include management or cost/price quality ratings from the relevant clients for two of the three examples assessed for past performance quality. *Id.* According to the protester, given the lack of management and cost/price quality ratings, the agency should have concluded that Bailey's proposal lacked sufficient information to meaningfully assess a past performance confidence rating. *Id.* at 17. To the extent the agency concluded that Bailey's proposal contained sufficient information to assess a confidence rating but concluded that Zolon PCS II's did not, the protester argues that it was treated unfairly. *Id.*; see Zolon PCS II Supp. Comments at 9-13. As discussed below, we have no basis to sustain this challenge.

As an initial matter, to the extent Zolon PCS II argues that the agency should have considered the quality of its past performance examples that had been evaluated as not relevant, the argument fails to state a valid basis of protest because it is inconsistent with the express terms of this solicitation. RFP at 27 (explaining that only past performance deemed very relevant, relevant, or somewhat relevant would be assessed for quality). As discussed above, we find that the agency reasonably found these two past performance examples to be not relevant. Accordingly, this aspect of the challenge is dismissed. 4 C.F.R. §§ 21.1(c)(4), (f); § 21.5(f).

We also find that Zolon PCS II has not demonstrated disparate treatment with respect to the evaluation of past performance. The record reflects that the agency's assessment of past performance was based on the substantive differences of the competing proposals. As discussed below, Zolon PCS II's rating of neutral resulted from the agency's conclusion that Zolon PCS II did not have sufficient relevant past performance. In contrast, Bailey's rating of satisfactory stemmed from the agency's conclusion that three of its past performance examples were relevant to some degree, and the agency had enough information regarding these three examples to assign a rating to Bailey's proposal.

As to Zolon PCS II's past performance rating of neutral, we find the rating to be reasonable. Out of three examples submitted, the agency found only one to have some limited degree of relevance. Given the terms of the solicitation, the agency reasonably concluded that Zolon PCS II's past performance volume did not contain a sufficient record of relevant past performance to assess a confidence rating. See RFP at 27 (citing FAR 15.305(a)(2)(iv)); FAR 15.305(a)(2)(iv) ("In the case of an offeror without a record of relevant past performance . . . the offeror may not be evaluated favorably or unfavorably on past performance."). The solicitation expressly required the submission of at least three relevant past performance examples. RFP at 15. Zolon PCS II submitted only one somewhat relevant example. Because the agency had no more than a single contract of limited relevance to measure the protester's past performance, it reasonably concluded that this single contract did not provide a sufficient record of Zolon PCS II's past performance to predict the firm's likelihood of successful

performance on the contract. Thus, the agency reasonably assigned the protester a rating of neutral under the past performance factor. See *id.* at 27.

In contrast, the agency's decision to assess Bailey's proposal with a rating of satisfactory under the past performance factor was reasonable and does not reflect disparate treatment. Bailey, unlike Zolon PCS II, submitted three past performance examples that the agency evaluated as either very relevant or somewhat relevant. All three of these examples were then assessed for quality as contemplated by the solicitation. See *id.* The record reflects that the agency considered multiple aspects of Bailey's past performance volume when assessing quality, including conducting interviews with the points of contact for Bailey's past performance examples. See Zolon PCS II AR, Tab C.2.a, Bailey Past Performance Evaluation at 7-10 (considering phone interviews, project summaries, past performance questionnaires, and other information included in the proposal). The agency thus reasonably considered all of the past performance information available in assessing Bailey's past performance. Such an approach was expressly contemplated by the terms of the solicitation. RFP at 15-16, 26-27. On this record, we conclude that the agency's evaluation of Zolon PCS II's past performance as compared with Bailey's past performance was not disparate and deny this protest ground.

#### Challenges Involving the Responsibility Determinations

Zolon PCS II challenges the contracting officer's affirmative determinations of responsibility of Bailey and LMR, and argues that Bailey in particular should have been found nonresponsible. Zolon PCS II Comments & Supp. Protest at 19-25; Zolon PCS II Supp. Comments at 21-33. As discussed below, we dismiss these challenges.

As a general matter, our Office does not review affirmative determinations of responsibility. 4 C.F.R. § 21.5(c); *Fidelis Logistic & Supply Servs.*, B-414445, B-414445.2, May 17, 2017, 2017 CPD ¶ 150 at 4. An exception to this general rule is where a protester presents evidence raising serious concerns that, in reaching a particular responsibility determination, the contracting officer unreasonably failed to consider available relevant information or otherwise violated statute or regulation. 4 C.F.R. § 21.5(c). The FAR does not require contracting officers to provide a written explanation for an affirmative responsibility determination. FAR 9.105-2; *Fidelis Logistic & Supply Servs.*, *supra* at 5.

First, Zolon PCS II notes that the responsibility determinations included with the agency report pertaining to Bailey and LMR were not signed or dated. Zolon PCS II Comments & Supp. Protest at 19-20; Zolon PCS II Supp. Comments at 22-23. The protester contends that this evidences a violation of FAR section 9.103(b) which states that "[n]o purchase or award shall be made unless the contracting officer makes an affirmative determination of responsibility." FAR 9.103(b).

This issue is not for our consideration. See 4 C.F.R. § 21.5(c). Unsigned or undated affirmative responsibility determinations do not constitute evidence raising serious

concerns that, in reaching a particular responsibility determination, the contracting officer unreasonably failed to consider available relevant information or otherwise violated FAR section 9.103(b). The FAR does not require contracting officers to provide a written explanation for an affirmative responsibility determination. FAR 9.105-2; *Fidelis Logistic & Supply Servs.*, *supra* at 5. Further, the ESAS-II contracts issued to Bailey and LMR constitute a determination that Bailey and LMR were found responsible. See FAR 9.105-2(a)(1) (“The contracting officer’s signing of a contract constitutes a determination that the prospective contractor is responsible”). This protest ground is dismissed. 4 C.F.R. § 21.5(c).

Next, in a supplemental protest, Zolon PCS II argues that Bailey should have been found nonresponsible for failing to continuously maintain an active system for award management (SAM) registration at all relevant times after submitting its proposal.<sup>13</sup> Zolon PCS II Comments & Supp. Protest at 22-25. In raising this issue, the protester presents evidence that Bailey’s SAM registration lapsed for a number of days between the time of proposal submission to the time of contract award. *Id.* at 23; see also Zolon PCS II Supp. COS/MOL at 18 (recognizing lapse); LMR Supp. Comments in Zolon PCS II Matter (no mention of this issue). The protester argues that FAR provision 52.204-7(b)(1) required the contracting officer to find Bailey nonresponsible in such a scenario. Zolon PCS II Comments & Supp. Protest at 22-25. FAR provision 52.204-7(b)(1) states in relevant part: “An Offeror is required to be registered in SAM when submitting an offer . . . and shall continue to be registered until time of award[.]”

NGA argues that this protest ground is untimely as it was raised for the first time in Zolon PCS II’s supplemental protest. Zolon PCS II Supp. COS/MOL at 12. NGA maintains that SAM registration status is public information and was publicly available at the time that Zolon PCS II learned of the award to Bailey. *Id.* NGA contends that while Bailey’s responsibility determination was produced with the agency report, the report did not disclose any specific information regarding Bailey’s registration status that was not already publicly available. *Id.* According to the agency, for this ground to have been timely raised it was required to be filed with the initial protest. *Id.*

Our Bid Protest Regulations contain strict rules for the timely submission of protests. Under these rules, a protest based on other than alleged improprieties in a solicitation must be filed no later than 10 days after the basis of protest is known or should have been known, with the exception of protests challenging a procurement conducted on the basis of competitive proposals under which a debriefing is requested and, when requested, is required. 4 C.F.R. § 21.2(a)(2); *General Dynamics Info. Tech., Inc.*, B-417616.2 *et al.*, Mar. 31, 2020, 2020 CPD ¶ 132 at 7.

This supplemental protest ground, raised for the first time on July 24, is untimely. In this regard, Zolon PCS II knew or should have known this basis for protest on May 10, when

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<sup>13</sup> SAM is the governmentwide point of entry and the official government system for entity information to include information on contractor responsibility and qualifications. FAR 2.101; <https://www.sam.gov> (last visited Sept. 13, 2023).

it learned that Bailey was selected for award. See Zolon PCS II Protest at 11-12 (on May 10, the agency informed Zolon PCS II of the awards to Bailey and LMR); FAR 9.103 (only responsible contractors may be awarded contracts). If the protester wanted to challenge this award on the basis of Bailey being nonresponsible due to SAM registration issues, it could have gathered publicly available information on Bailey's SAM registration history and filed a protest in accordance with our regulations.<sup>14</sup> See 4 C.F.R. § 21.2(a)(2).

The protester argues that it learned this basis of protest from the responsibility determinations filed with the agency report and therefore this challenge is timely filed. Zolon PCS II Comments & Supp. Protest at 19-20; Zolon PCS II Supp. Comments at 21. In this regard, the protester suggests that it needed to review the responsibility determinations in order to raise its challenge. Zolon PCS II Supp. Comments at 21-22. We disagree. The responsibility information included in the agency report did not present any information on Bailey's SAM registration status that was not publicly available at the time of award. As detailed above, by May 10, Zolon PCS II had all of the information required to raise this issue. Our decisions consistently explain that a protester need not await perfect knowledge before filing a protest. See e.g., *General Dynamics Info. Tech., Inc., supra* at 9. Accordingly, it is dismissed as untimely. 4 C.F.R. § 21.2(a)(2).

The protests are denied.

Edda Emmanuelli Perez  
General Counsel

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<sup>14</sup> We note that Zolon PCS II was able to gather information on Bailey's SAM registration from publicly available sources for the purpose of raising this supplemental protest ground. See e.g., Zolon PCS II Comments & Supp. Protest, exh. 1, Bailey SAM Information; exh. 2, Bailey SAM Information.