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Decision

Matter of: VSE Corporation

File: B-421942; B-421942.2; B-421942.3

Date: December 13, 2023

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Samantha S. Lee, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protests challenging cost realism analysis and the agency's evaluation under the management factor are denied where the record shows that the agency complied with the solicitation's terms.
 2. Protest that the agency failed to perform a proper best-value tradeoff is denied where the agency's award decision was reasonable and adequately documented.
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DECISION

VSE Corporation, of Alexandria, Virginia, protests the Department of the Navy, Naval Sea Systems Command's award of a contract to Amentum Services, Inc. of Germantown, Maryland, under request for proposals (RFP) No. N0002418R4200 for foreign military sales (FMS) follow-on technical support (FOTS). VSE argues that the agency's evaluation of proposals and resulting award decision were improper.

We deny the protest.

BACKGROUND

On July 5, 2019, using the procedures of Federal Acquisition Regulation (FAR) part 15, the Navy issued the solicitation on an unrestricted, full and open competitive basis.

Agency Report (AR) Tab 1, RFP at 1, 168.¹ The RFP sought proposals to provide foreign customers access to a broad range of security cooperation solutions and FOTS, including sustainment material, systems upgrades, systems integration support, training, and other related efforts associated with the transfer and acquisition, operation, and maintenance of naval vessels, systems, and related ship support infrastructure within their inventories through the FMS program. *Id.* at 11. The solicitation provided for award of a single indefinite-delivery, indefinite-quantity (IDIQ) contract with cost-plus-fixed-fee (CPFF), fixed-price, and cost-reimbursable contract line item numbers (CLINs). COS/MOL at 3. The contract would have a 5-year period of performance. *Id.*

The solicitation provided for award to be made on a best-value tradeoff basis and established the following four evaluation factors, in descending order of importance: (1) technical capability, (2) management, (3) past performance, and (4) evaluated cost/price. RFP at 168. The three non-cost/price factors, when combined, were significantly more important than the evaluated cost/price factor. *Id.* The RFP explained that the technical capability and management factors would be evaluated and assigned adjectival technical/risk ratings of outstanding, good, acceptable, marginal, or unacceptable. *Id.* at 167. In contrast, the past performance factor would be evaluated on an acceptable/unacceptable basis. *Id.* at 167-68. With respect to cost/price, the agency would evaluate for reasonableness, balance, and realism. *Id.* at 170.

The agency received four proposals by the September 24, 2019, deadline for receipt of initial proposals. COS/MOL at 3, 10. Following discussions and submission of final proposal revisions, the evaluators assessed the protester’s and awardee’s proposals as follows:

	VSE	Amentum
Technical capability	Outstanding	Outstanding
Management	Outstanding	Outstanding
Past performance	Acceptable	Acceptable
Evaluated cost/price	\$633,933,957	\$612,398,048

AR, Tab 18, Source Selection Decision Document (SSDD) at 2-3. The source selection authority (SSA) reviewed and concurred with the source selection advisory council’s (SSAC) comparison of proposals and concluded that Amentum’s lower-price proposal provided the best value. *Id.* at 4-6. On August 18, 2023, the Navy awarded the contract to Amentum. COS/MOL at 14. This protest followed.

¹ The RFP was amended eight times. Contracting Officer’s Statement and Memorandum of Law (COS/MOL) at 3. Citations to the RFP are to the final conformed version of the solicitation. All citations to the record are to the documents’ Adobe PDF pagination.

DISCUSSION

The protest is focused primarily on the agency's evaluation of Amentum's proposal. VSE asserts that the Navy's cost realism evaluation was improper and inadequate. Protest at 7-13. The protester also argues that Amentum's proposal failed to comply with various solicitation requirements or otherwise presented significant risk, and therefore should have been evaluated as unacceptable and ineligible for award. Resp. to Req. for Dismissal & 1st Supp. Protest at 12-15; Supp. Comments at 11-12. Finally, VSE asserts that the agency's award decision evidences improper disparate treatment of the offerors and application of unstated evaluation criteria rather than a meaningful best-value tradeoff as required by the solicitation.² Protest at 13-16, 18.

In filing and pursuing this protest, VSE has made arguments that are in addition to, or variations of, those discussed below. We have considered all of the protester's arguments and, while we do not address them all, none provide any basis on which to sustain the protest.

Cost Realism

VSE's principal basis for protest centers on a variety of arguments that the Navy's cost realism analysis was unreasonable. Comments & 2nd Supp. Protest at 16-21. The agency defends its cost realism analysis as reasonable and consistent with the terms of the solicitation. COS/MOL at 15-25.

When an agency evaluates a proposal for the award of a contract that includes cost-reimbursable CLINs, an offeror's proposed estimated costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. See FAR 15.305(a)(1), 15.404-1(d); *Palmetto GBA, LLC*, B-298962, B-298962.2, Jan. 16, 2007, 2007 CPD ¶ 25 at 7. Consequently, the agency must perform a cost realism analysis to determine the extent to which an offeror's proposed costs are realistic for the work to be performed. FAR 15.404-1(d)(1). An agency is not required to conduct an in-depth cost analysis, or to verify each and every item in assessing cost realism; rather, the evaluation requires the exercise of informed judgment by the contracting agency. See *Cascade Gen., Inc.*, B-283872, Jan. 18, 2000, 2000 CPD ¶ 14 at 8; FAR 15.404-1(c). Our review of an agency's cost realism evaluation is limited to determining whether the cost analysis is reasonably based and not arbitrary. *Jacobs COGEMA, LLC*, B-290125.2, B-290125.3, Dec. 18, 2002, 2003 CPD ¶ 16 at 26.

The RFP included five CPFF CLINs for labor hours: (1) program management support; (2) engineering support; (3) technical support; and (4) and (5) in-country maintenance support (one based on performance in Egypt and Iraq, and one based on performance

² VSE's protest also alleged that the Navy conducted misleading discussions. Protest at 16-17. This allegation was subsequently withdrawn. Comments & 2nd Supp. Protest at 2 n.1.

in the Philippines). RFP at 2-3, 8. The solicitation dictated the number of labor hours for each CLIN, per year. *Id.* at 10. The RFP also provided a “labor mix per CLIN, by labor category and labor hours.” *Id.* at 151. Offerors were not permitted “to propose new or additional labor categories from those identified . . . [or] change the Government’s quantity of labor hours required,” and bore the burden to “demonstrate the realism” of any change to the allocation of hours. *Id.* Offerors were required to propose direct labor rates for each labor category as well as propose indirect rates, fixed fee, and labor escalation percentage, all with supporting rationale. *Id.* at 150-51.

The solicitation provided that the Navy would perform a cost realism analysis on the CPFF CLINs to determine if the “costs are realistic for the work to be performed.” *Id.* at 171. The RFP specified that the evaluators would consider “[p]ertinent cost information, including but not limited to independent government cost estimates, comparisons of the Offerors proposed approaches and efforts to historical cost data from similar programs and effort, [and] cost modeling programs,” to analyze and--if necessary--upwardly adjust proposed direct labor and indirect rates. *Id.* For the labor rate evaluation, the cost/price analysis team (CPAT) reviewed compliance with the Navy’s labor mix and escalation guidance, analyzed any proposed uncompensated overtime, compared direct labor rates to substantiating data like payroll data or salary surveys, and assessed indirect rates. AR, Tab 16, CPAT Report at 9-12.

Asserted Risks

According to the protester, the Navy failed to identify--and unreasonably disregarded--risks in Amentum’s proposal during the cost realism evaluation. Comments & 2nd Supp. Protest at 10-11, 16-17. The record, however, demonstrates that the agency reviewed Amentum’s proposed cost/price consistent with the solicitation’s provisions for the cost realism analysis.

For example, the CPAT began by assessing that Amentum proposed the required total number of labor hours, and determined that Amentum proposed only a small, reasonable deviation from the allocation of labor hours.³ AR, Tab 16, CPAT Report at 21. The evaluators further found that Amentum proposed a [DELETED] percent escalation rate, which was substantiated by three years of direct rate history and met the minimum percentage in the RFP. *Id.* at 22. The CPAT recognized that Amentum proposed uncompensated overtime (UCOT) for full-time exempt employees, identifying the number of hours proposed, noting that Amentum supported its proposal with a copy of its policy and a spreadsheet of Amentum’s “historical average of total hours changed by exempt employees over the past three years,” finding that the approach was realistic but might pose performance risk to “Amentum’s ability to attract and retain qualified employees.” *Id.* at 22-23. Upon review, the SSAC disagreed with the CPAT’s assessment of risk, finding that it was “mitigated by information presented in the

³ Amentum proposed moving [DELETED] hours from program manager to support personnel under CLIN 0001, program management support. AR, Tab 14, Amentum Cost/Price Proposal at 40.

Offeror's proposal that demonstrates the successful historical usage of UCOT" and that there was no evidence of "unsatisfactory performance due to UCOT" in Amentum's past performance. AR, Tab 17, SSAC Report at 8.

VSE asserts that, in its cost realism analysis, the agency "failed to consider the risks associated with Amentum's recent creation." Comments & 2nd Supp. Protest at 16-17. Amentum was acquired in 2020, and later acquired two other companies. COS/MOL at 15. According to VSE, this corporate history means that Amentum made "optimistic, but entirely speculative" projections of indirect rates.⁴ Comments & 2nd Supp. Protest at 16-17. In addition, VSE asserts that the SSAC incorrectly concluded that there was support in Amentum's proposal and performance history to find the performance risk of UCOT was mitigated. *Id.* at 10-11.

The record does not support VSE's arguments, in this regard. As the Navy explains, during discussions, the evaluators specifically engaged with Amentum regarding the effect of any "corporate restructuring" including the transactions that the protester identifies. COS/MOL at 16-18. Further, the SSAC contemporaneously explained its basis for finding that there was no performance risk of turnover posed by the "relatively small amount of uncompensated overtime proposed here (less than [DELETED] [percent] of total hours)"--including the discussion in Amentum's proposal that the firm does not mandate overtime and takes other steps to maintain employee morale and avoid turnover. *Id.* at 27-28.

VSE also generally argues that the agency failed to understand, appreciate, or meaningfully analyze the cost realism of Amentum's approach. At bottom, however, VSE has not demonstrated that the agency failed to conduct a cost realism analysis--only that the protester disagrees with the agency's ultimate conclusions about whether Amentum's approach is realistic and feasible for the work to be performed. Agencies are given broad discretion to make cost realism evaluations, and a protester's disagreement, without more, is insufficient to sustain a protest. *IPKeys Techs., LLC*,

⁴ VSE also asserts that, because Amentum is a relatively new corporate entity, Amentum did not provide all of the historical information that the RFP required in support of its rates. Comments & 2nd Supp. Protest at 16-17. As the agency explains, however, VSE's proposal took the same approach, providing historical data where available and substantiating rates with other measures where it was not. Supp. COS/MOL at 35. To the extent that Amentum failed to comply with the solicitation by not providing historical data for every labor category, the protester failed to explain why the same analysis also would not have applied to VSE's own proposal, which, similarly did not provide historical data for every labor category. As a consequence, VSE cannot demonstrate that it was competitively prejudiced by the agency's action in this regard, and we find no basis to sustain this argument. See *Lockheed Martin Corp.*, B-411365.2, Aug. 26, 2015, 2015 CPD ¶ 294 at 13-14 (denying protest alleging that awardee failed to comply with solicitation's page limit because the protester was not prejudiced where it took the same approach).

B-416873.2, B-416873.3, Apr. 5, 2019, 2019 CPD ¶ 138 at 5, 8. Accordingly, this allegation is denied.

Comparison to Protester's Costs

VSE further claims that the agency's cost realism analysis of Amentum's proposed labor rates was inadequate because the agency did not compare costs between Amentum's proposal and VSE's. Comments & 2nd Supp. Protest at 18-20. Alleging the cost difference to be "significant" because Amentum's rates were "28.5 [percent] lower than those proposed by VSE," VSE asserts that the agency "was not at liberty to simply **overlook** and ignore the drastic difference in rates." *Id.* The agency denies that it had any obligation to assess the realism of Amentum's proposal by comparing it to VSE (or any other incumbent provider of similar services). COS/MOL at 23-24.

The solicitation advised that proposal costs would be evaluated "to determine (i) the extent to which the Offeror understands the government's requirements and (ii) what the government should realistically expect to pay for the offeror's performance should the Offeror receive the award." RFP at 171. The RFP identified a number of comparisons that the agency could employ in the evaluation of proposed costs. As we have explained, an agency's cost analysis need not achieve scientific certainty; rather, the methodology employed must be reasonably adequate and provide some measure of confidence that the agency's conclusions about the most probable costs for an offeror's proposal are reasonable and realistic in view of other cost information reasonably available to the agency at the time of its evaluation. *Tatitlek Techs., Inc.*, B-416711 *et al.*, Nov. 28, 2018, 2018 CPD ¶ 410 at 14.

Here, the agency elected to assess Amentum's labor rates by considering the substantiating information in contingent hire letters and salary survey data. AR, Tab 16, CPAT Report at 25-26. Although the protester disagrees with the agency's approach, the cost realism analysis is not rendered objectionable simply because the agency did not assess the realism of Amentum's labor rates by comparing Amentum's proposal to VSE's--as VSE would prefer. *Stargates, Inc.*, B-419349 *et al.*, Jan. 22, 2021, 2021 CPD ¶ 64 at 12-13 (denying allegation that a cost realism evaluation was unreasonable because the agency did not compare the awardee's proposed costs to the protester's or "any other objective source"); *Quantech Servs., Inc.*, B-408227.8, B-408227.9, Dec. 2, 2015, 2015 CPD ¶ 380 at 8 ("There is no requirement that an agency follow any particular cost realism evaluation method, or evaluate offerors' proposed costs using every possible method of analysis."). As such, VSE's allegation here is denied.

Method of Performance

VSE also asserts that the Navy's cost realism evaluation was unreasonable because it was based on--in the protester's view--Amentum's flawed technical approach to performance. Comments & 2nd Supp. Protest at 4-10. According to VSE, the Navy should have found that Amentum would not be able to perform in the manner it proposed, and the evaluators should have adjusted Amentum's costs accordingly. The

agency defends its cost realism analysis as reasonable and consistent with the terms of the solicitation. COS/MOL at 15-25.

For example, Amentum's proposed direct labor was based on hiring some personnel as employees, and others as independent contractors, also referred to as "1099 workers." AR, Tab 14, Amentum Cost/Price Proposal at 16-18. According to VSE, "Amentum's proposal relies heavily on 1099 workers," who are not entitled to fringe and other benefits, when they "should be treated--and therefore evaluated--as employees," who are entitled to such benefits. Comments & 2nd Supp. Protest at 3-5.

VSE concedes that the "Navy apparently understood that Amentum was proposing to rely on 1099 workers." *Id.* at 4. VSE maintains, however, that the cost realism analysis was still inadequate because VSE doubts the legitimacy of Amentum's proposed approach, and "the Navy failed to consider whether this approach was permissible under prevailing law (or even the terms of the RFP) and to assess the cost impact . . . in the event the IRS compels Amentum to treat these 'independent contractors' as employees" and ignored the associated risks. *Id.* at 4. Further, although VSE acknowledges that the Navy found the rates for these employees realistic based on the data and strategy Amentum provided, VSE asserts that the Navy was obliged to reject Amentum's approach and dig deeper in the analysis. *Id.* at 5-7.

VSE also alleges Amentum improperly misclassified certain personnel under the program management CLIN as exempt from the Fair Labor Standards Act, and that the Navy failed to identify the alleged misclassification in the cost realism analysis--which, according to VSE, should have led the agency to upwardly adjust Amentum's evaluated cost/price "by at least \$3 million." Comments & 2nd Supp. Protest at 9-10. In addition, although the protester recognizes that Amentum "proposed to a hire a new staff" for the in-country maintenance support CLINs, VSE contends, based on its incumbent experience and knowledge of the industry, that "Amentum will have effectively no alternative but to hire VSE's incumbent workforce" and will be unable to do so at the lower rates Amentum has proposed. *Id.* at 15. In short, VSE alleges the Navy should have rejected Amentum's staffing approach, because Amentum's approach failed to match VSE's interpretation of labor law requirements and the protester's understanding of the personnel who performed on the incumbent effort. We disagree.

The purpose of a cost realism analysis is to determine the extent to which the offeror's proposed costs are realistic and reasonable. Such a determination must itself be reasonable. The cost realism analysis aims to determine what, in the government's view, it would realistically cost the offeror to perform given the offeror's own technical approach. FAR 15.404-1(d)(1); *Concurrent Techs. Corp.*, B-412795.2, B-412795.3, Jan. 17, 2017, 2017 CPD ¶ 25 at 15. The agency is not required to conduct an extensive analysis or to verify all elements supporting the cost realism assessment, and our Office will not disturb an agency's cost realism analysis unless it is shown to lack a reasonable basis. *Orbital Sci. Corp.*, B-414603, B-414603.2, July 26, 2017, 2017 CPD ¶ 249 at 7.

Here, VSE's challenges to the cost realism evaluation are not about the costs of Amentum's own technical approach as proposed. Instead, VSE contends that the agency should have assumed that Amentum's approach will fail, and thus, should have calculated the costs of an alternative approach that VSE believes is more likely. The realism of an offeror's costs, however, is not assessed by comparing one offeror to another, but rather, assessing whether the offeror's proposed costs are realistic for its unique technical approach. *Onyx-Technica, JV*, B-412474, B-412474.2, Feb. 26, 2016, 2016 CPD ¶ 65 at 5. The agency here recognized that Amentum proposed to rely on independent contractors and characterized some personnel as exempt.⁵ The evaluators found that approach realistic based on Amentum's proposal, which detailed the firm's (1) past success in using the staffing model; (2) premium pay to independent contractors to account for their differences from employees; and (3) commitment to labor regulations. Supp. COS/MOL at 6, 23-24. VSE's contention that its own approach, based on a different interpretation of the labor requirements, is different and thus more expensive than Amentum's, does not provide a basis to find that the agency's cost realism assessment of Amentum's proposal lacked a reasonable basis. *EFW Inc.*, B-418177 *et al.*, Jan. 21, 2020, 2020 CPD ¶ 124 at 11 (denying protest that awardee's approach was not realistic where the record provided reasonable basis for realism review). Accordingly, we find that VSE's allegations provide no basis to sustain the protest.

Finally, VSE reiterates the same arguments regarding the realism of Amentum's proposed approach to assert that the Navy not only should have found Amentum's cost/price proposal to be unrealistic, but the agency should have also identified performance risks based on the allegedly unrealistic approach.⁶ Because we find no basis to question the agency's determination that Amentum's proposed costs were realistic, we find no merit to the protester's argument that the agency should have identified performance risk in Amentum's management approach simply based on the protester's belief that Amentum's costs were unrealistic for the approach proposed.

⁵ As the agency explains, in contracts for services and construction, direct labor may be covered by Department of Labor wage determinations and is considered non-exempt (*i.e.*, occupations such as clerical, that do not require a professional license or college degree). COS/MOL at 22 (citing Protest, exh. O at 10). As non-exempt employees, they must be paid no less than delineated on the associated wage determination or collective bargaining agreement. *Id.* In contrast, management and professional salaried staff, are not covered by a wage determination and are considered exempt (*i.e.*, occupations that typically require a professional license or college degree). As exempt employees, they will receive benefits and wages comparable to those in industry and Government. *Id.*

⁶ Comments & 2nd Supp. Protest at 5 ("The Navy also failed to consider the performance risk associated with such a high percentage of 'independent' workers . . ."); *id.* at 12-15 ("Amentum should have received a significant weakness for its reliance on 1099 workers."); *id.* at 15 (asserting the Navy should have "downgraded" Amentum's proposal based on a "plan to underpay" incumbent personnel).

Mitchell Vantage Sys., LLC, B-421548.2, B-421548.3, Sept. 29, 2023, 2023 CPD ¶ 232 at 7 (denying protest alleging that the agency should have assigned performance risk to the awardee in the non-price evaluation where the agency reasonably found that the awardee's "proposed costs did not demonstrate a lack of understanding or pose a performance risk").

Relaxed Requirements

VSE also contends that Amentum failed to meet solicitation requirements under the management factor, and the agency either overlooked or excused Amentum's alleged noncompliance. Comments & 2nd Supp. Protest at 7-9. For example, the protester alleges that Amentum's proposal "ignored express work location requirements in the RFP and instead assumed a huge percentage (practically all) of its personnel would telework," which resulted in "artificially lower proposed costs and an unfair evaluation advantage." *Id.* at 7. The agency asserts that VSE's argument ignores an amendment to the terms of the solicitation that specifically allowed for Amentum's telework approach. Supp. COS/MOL at 16-20.

Under the management factor, offerors were required to discuss their staffing approaches. RFP at 145. When the Navy issued amendment 5 to the solicitation, it modified the language within "Section C - Descriptions and Specifications," to specify that the work under CLIN 0001 for program management support "shall be performed by parent company headquarters CONUS [Continental United States]-based staff (for both prime and subcontractor personnel), working locally at contractor facilities." RFP at 11; Supp. COS/MOL at 16. The agency subsequently issued a letter to all offerors providing a consolidated list of the requests for clarification received from offerors during discussions and the Navy's responses to those questions. AR, Tab 6, Second Discussions Clarification Letter at 1. With respect the referenced language, Question No. 11 asked:

Given that government and industry demonstrated the ability to perform work remotely for extended periods of time during the recent COVID-19 pandemic, and in many cases, teams are still successfully working from remote sites, please confirm that a staffing/pricing approach that utilized staff in other than contractor facilities would be considered realistic and compliant?

Id. at 3. In response, the agency answered:

The expectation is that the FMS Program Management function be supported local to the Offeror's headquarters. This does not preclude Program Management support from being provided in a telework status or from other than the Offeror's facilities, so long as the Program Management team can make itself available at the Offeror's headquarters for scheduled in-person meetings with [the Navy], as necessary, without incurring travel costs chargeable to contract.

Id. Significantly, the protester does not deny that this response would allow for Amentum’s telework approach. Instead, the protester asserts that this response did not modify the terms of the RFP, because the letter to offerors had not been officially incorporated into the solicitation by amendment or modification of the RFP. Supp. Comments at 11-12. We disagree.

By providing all firms with identical information during the course of its exchanges, the agency effectively amended the terms of the RFP. *PWC Logistics Servs., Inc.*, B-299820, B-299820.3, Aug. 14, 2007, 2007 CPD ¶ 162 at 5-6, n 3 (“Where, as here, an agency provides identical language or information to all offerors during discussions, its actions are tantamount to amending the RFP, even though no formal amendment has independently been issued.”); *Sikorsky Aircraft Corp.*, B-416027, B-416027.2, May 22, 2018, 2018 CPD ¶177 at 7, n.8 (“[W]here, as here, the agency has issued a clarification letter to all offerors during discussions, coupled with an opportunity to revise their proposals accordingly, we view that clarification as tantamount to a solicitation amendment.”). Under the circumstances here, the agency’s clarification letter to all offerors was tantamount to a solicitation amendment that clarified the language of the requirement inserted by amendment 5. As such, we find no merit to the protester’s allegation--where VSE, itself, concedes that the clarification letter would allow for Amentum’s telework approach.⁷ See Supp. Comments at 11.

Best-Value Decision

Finally, VSE challenges the agency’s source selection decision, asserting that the SSA’s tradeoff analysis and best-value determination were unreasonable because they were based on the asserted flawed underlying evaluations. Protest at 17. Additionally, in the protester’s view, the agency treated the offerors unequally and applied unstated evaluation criteria when considering the strengths of the offerors and failed to

⁷ VSE also argues that the because the solicitation “required offerors to propose an identical level of effort for each year of performance,” it required offerors to “perform a full level of effort beginning on the date of award.” Comments & 2nd Supp. Protest at 20-21. According to the protester, the difference between Amentum’s evaluated cost/price of \$612,398,048 and the lower awarded contract ceiling value of \$591,653,634 shows that the Navy relaxed the requirement for immediate full performance for VSE. *Id.* The record shows, however, that the difference in evaluated and awarded costs is not related to anything that Amentum proposed (or did not propose) to do. Instead, the difference is because the Navy evaluated and calculated the cost/price for offerors’ materials, travel, and other direct costs CLINs “with Offeror-applied burdens,” but used “the Government-provided ceiling amount for each CLIN” in the award. *Compare* AR, Tab 16, CPAT Report at 18 (reflecting Amentum’s total evaluated cost/price breakdown) *with* AR, Tab 19, Business Clearance Memorandum at 3 (summarizing the basis for the award). VSE, therefore, fails to establish that the agency relaxed or waived a solicitation requirement for Amentum.

meaningfully distinguish between offerors under the past performance factor. Comments & 2nd Supp. Protest at 22-24.

The agency responds, arguing that, although the protester alleges unequal treatment and unstated evaluation criteria, in reality, the protester simply disagrees with the SSA's reasonable consideration and comparison of the various discriminators between VSE and Amentum. COS/MOL at 28-35. The Navy further contends that the solicitation established that the past performance factor was to be evaluated on an acceptable/unacceptable basis only, so the SSA was not obligated (or permitted) to draw qualitative distinctions under that factor for the award decision. *Id.* at 42-45.

In a best-value tradeoff procurement, such as this one, it is the function of the SSA to perform a tradeoff to determine whether one proposal's technical superiority is worth a higher cost/price. *General Dynamics—Ordnance & Tactical Sys.*, B-401658, B-401658.2, Oct. 26, 2009, 2009 CPD ¶ 217 at 8. Even where, as here, cost/price is the least important evaluation factor, an agency properly may select a lower-priced, lower-rated proposal if the agency reasonably concludes that the cost/price premium involved in selecting a higher-rated, higher-priced proposal is not justified in light of the acceptable level of technical competence available at a lower cost/price. *Id.* The extent of such tradeoffs is governed only by the test of rationality and consistency with the evaluation criteria. *Hillstrom's Aircraft Servs.*, B-403970.2, Dec. 28, 2010, 2010 CPD ¶ 303 at 5. Thus, a protester's disagreement with an agency's determinations as to the relative merits of competing proposals or disagreement with its judgment as to which proposal offers the best value to the agency does not establish that the evaluation or source selection was unreasonable. *Id.*

Here, we find unobjectionable the SSA's tradeoff and source selection decision. As described above, we find no merit to the protester's challenges to the cost realism and management evaluations; thus, there is no basis to question the SSA's reliance upon those judgments in making her source selection decision. Accordingly, we dismiss this allegation because derivative allegations do not establish independent bases of protest. *DirectViz Sols., LLC*, B-417565.3, B-417565.4, Oct. 25, 2019, 2019 CPD ¶ 372 at 9.

Additionally, the record does not support VSE's assertions that the agency treated the offerors unequally or applied unstated evaluation criteria in distinguishing between the proposals. In this regard, the record shows that in conducting the tradeoff, the SSA considered VSE's and Amentum's strengths, including how impactful those strengths would be. See AR, Tab 18, SSDD at 4-5. Here, the SSA relied on the SSAC's analysis and recommendation. *Id.* That analysis and recommendation described the offerors' strengths and identified which strengths were similar across offerors and which were distinct. AR, Tab 17, SSAC Report at 14-18. The SSAC then analyzed the impact of the distinct strengths based on the nature of the benefit to the Navy and how much of the work under the contract would be impacted by that benefit. *Id.* Acknowledging that VSE had more strengths under the most important evaluation factor, the SSA explained that "any isolated technical benefit identified in VSE's proposal does not support paying

an evaluated cost premium of \$51,535,909, or 8.42%, over the evaluated lower cost offer of Amentum.” AR, Tab 18, SSDD at 5.

VSE contends that the Navy “treated Amentum more favorably than VSE” and applied unstated evaluation criteria by determining that certain strengths were more or less “impactful” than others. Comments & 2nd Supp. Protest at 21-22. Source selection officials, however, have broad discretion to determine the manner and extent to which they will make use of evaluation results, and must use their own judgment in deciding what the underlying differences between proposals might mean to successful performance of the contract. *ERC Inc.*, B-407297, B-407297.2, Nov. 19, 2012, 2012 CPD ¶ 321 at 6; *Applied Physical Scis. Corp.*, B-406167, Feb. 23, 2012, 2012 CPD ¶ 102 at 6. Here, VSE has failed demonstrate any solicitation provision or procurement law or regulation that was violated by the agency’s tradeoff determination. The protester’s disagreement with the agency’s judgments about the relative merit of competing proposals, without more, does not establish that the agency departed from the solicitation or that the agency’s judgments were unreasonable. *Battelle Mem’l Inst.*, B-418047.5, B-418047.6, Nov. 18, 2020, 2020 CPD ¶ 369 at 13.

The protester also asserts that the best-value tradeoff was not meaningful because the agency failed to consider the relative merits of the offerors’ past performance histories. Comments & 2nd Supp. Protest at 22-24. Our review of the record finds the agency’s consideration of past performance was reasonable and consistent with the solicitation’s evaluation criteria.

The SSAC and SSA concluded that the offerors were equal under the past performance factor based on their “acceptable” evaluations. AR, Tab 17, SSAC Report at 17; AR, Tab 18, SSDD at 5. Unlike the technical factors, the solicitation provided for the evaluation of past performance on an acceptable/ unacceptable basis. RFP at 167. That is, the solicitation provided for the consideration of the quality of each offeror’s past performance for purposes of rating the offeror’s past performance as acceptable or unacceptable, but it did not provide for a comparison between the offerors of the relative quality (or amount) of their past performance. *Id.* Under the terms of solicitation, there simply was no basis for the agency to give an offeror greater credit for past performance that was deemed to be acceptable. *Invertix Corp.*, B-411329.2, July 8, 2015, 2015 CPD ¶ 197 at 6-7 (denying protest that agency unreasonably failed to consider the relative merits of the protester’s superior past performance where the solicitation provided past performance would be evaluated as acceptable or unacceptable).

Notwithstanding the protester’s views, the mere fact that the SSA--in a best-value procurement where the technical factors are more important than price--determines that the slightly lower-rated offeror is a better value than the higher price offeror, does not, in and of itself, demonstrate that the source selection was improper. *General Dynamics-Ordnance & Tactical Sys.*, *supra* at 8. Here, the SSA acknowledged and documented the advantages of the higher-cost, higher-rated offer, and explained why they were not worth the cost premium. In these circumstances, the selection of Amentum was

reasonable.

The protest is denied.

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General Counsel