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Decision

Matter of: a. i. solutions, Inc.

File: B-424229, B-424229.2

Date: April 30, 2026

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Brian G. Walsh, Esq., Tracye Winfrey Howard, Esq., W. Benjamin Phillips III, Esq., Jack O. Raineri, Esq., and Anthony Iorio, Esq., Wiley Rein LLP, for ARES Technical Services Corp., the intervenor.

Jennifer L. Howard, Esq., Adam C. Supple, Esq., and Grant L. Arnold, Esq., National Aeronautics and Space Administration, for the agency.

Thomas J. Warren, Esq., and Alexander O. Levine, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency was required to reject awardee's proposal as ineligible for failing to provide notification of a potential organizational conflict of interest is denied where the agency's evaluation was reasonable and consistent with the solicitation and any representation concerning the alleged conflict was not material following the agency's waiver of the alleged conflict.
 2. Protest that agency conducted unequal discussions is denied where the record shows that the agency's exchanges addressed the alleged conflict and did not result in changes to the awardee's technical or price proposal.
 3. Protest that agency unreasonably and unequally evaluated proposals is denied where the record shows the agency evaluated proposals in accordance with the terms of the solicitation and did not engage in disparate treatment.
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DECISION

a.i. solutions, Inc., of Lanham, Maryland, challenges the award of a contract to ARES Technical Services Corp., of McLean, Virginia, under request for proposals (RFP) No. 80GSFC23R0009, issued by the National Aeronautics and Space Administration (NASA), for operations and maintenance services at the Wallops Flight Facility on Wallops Island, Virginia. The protester contends that the agency should have rejected

ARES's proposal for failing to identify a potential organizational conflict of interest (OCI) and that the agency conducted unequal discussions by allowing ARES to revise its proposal to address the potential OCI. The protester also argues that the agency evaluated proposals unreasonably and disparately and failed to perform a proper best-value tradeoff.

We deny the protest.

BACKGROUND

Procurement History

On October 18, 2023, NASA issued the solicitation for the Wallops Range Contract (WRC) at issue, to acquire operations and maintenance services at the Wallops Flight Facility on Wallops Island, Virginia. Agency Report (AR), Exh. 1A, RFP at 1; RFP, attach. A, Statement of Work (SOW) at 4.¹ The solicitation's SOW included range operational, maintenance, and sustainment services, including launch ground operations support, engineering, command and control, and information technology services. *Id.*; Contracting Officer's Statement (COS) at 1. The RFP contemplated the award of a single hybrid contract that includes a core services element and an indefinite-delivery, indefinite-quantity (IDIQ) ordering structure with a one-year base period and four one-year option periods. RFP at 17, 96; COS at 1. The solicitation included a maximum ordering value of \$253,780,000 and contemplated the issuance of cost-plus-fixed-fee and fixed-price task orders. *Id.*

For source selection, the solicitation stated the intent to use the tradeoff process set forth in Federal Acquisition Regulation (FAR) part 15 and NASA FAR Supplement (NFS) 1815.3, using three evaluation factors: mission suitability, past performance, and cost. RFP at 139. The solicitation explained that the cost factor was "significantly less important than the combined importance" of the mission suitability and past performance factors. *Id.* As relevant here, the mission suitability factor had three subfactors: (a) management approach; (b) technical approach; and (c) small business utilization. *Id.* The mission suitability factor was the only evaluation factor scored numerically, with 1000 possible points across the subfactors weighted as follows: management approach (500); technical approach (400); and small business utilization (100). *Id.*

As relevant to this protest, the solicitation also included NASA's notice of potential organizational conflict of interest clause, Goddard Space Flight Clause (GSFC) 52.209-301, which requires OCI plans to be submitted with proposals. RFP at 101-102, 138; COS at 9. The solicitation explained that offerors were required to submit an acceptable OCI plan in accordance with FAR 9.504 and the "requirements of Data

¹ All citations to the RFP refer to the conformed RFP that incorporates all amendments, included as exhibit 1A of the agency report. All page numbers are to the Adobe pdf page numbers.

Requirements Description . . . NFS Appendix C, C-202.1 [OCI] Plan[,]” which was included as RFP attachment S. *Id.*; RFP, attach S., OCI Plan. As specified under the RFP heading, “prospective contractor responsibility and eligibility standards,” OCI plans would be assessed as an “eligibility standard.” RFP at 138. The RFP further stated that the “proposed OCI plan shall be consistent with all other areas of the proposal” and “[m]aterial inconsistencies between the plan and other proposal areas may render the proposal invalid, resulting in an unacceptable proposal that is ineligible for award.” *Id.* Finally, the solicitation indicated that the agency “may communicate with offerors about the [OCI plan] eligibility requirement[,]” but that “[t]his communication does not constitute discussions as defined in FAR 15.306.” *Id.* The solicitation also noted that if OCI plans “cannot be made acceptable to the Government, the offeror will be considered ineligible for award.” *Id.*

Initial proposals were due on December 12. COS at 2. The agency received eight timely proposals, including proposals from a.i. solutions and ARES. *Id.* A year later, on December 18, 2024, the agency established a competitive range, which included a.i. solutions and ARES. *Id.* The agency then established February 5, 2025, as the due date for final proposal revisions. *Id.* at 3. Both ARES and a.i. solutions submitted timely final revised proposals. *Id.*

On March 17, NASA awarded ARES a separate contract: the Safety and Mission Assurance Services III (SMAS III) contract. Protest at 11; AR, Exh. 11A, WRC OCI Investigation. As relevant here, the SMAS III contract is an IDIQ services contract with broad responsibilities that include conducting independent surveillance, audits, reviews and assessments across NASA mission areas--including providing support for the Wallops Flight Facility. Protest at 11-12; AR, Exh. 11A, WRC OCI Investigation at 2.

On April 14, after concluding its evaluation of final revised proposals submitted in response to the WRC solicitation, NASA determined that the proposal submitted by ARES represented the best overall value. COS at 4; AR, Exh. 7, Source Selection Statement (SSS) at 11. The following is the summary of the agency’s evaluation findings with respect to the two proposals:

| | ARES | a.i. solutions |
|---|--------------|-----------------------|
| Mission Suitability | | |
| Subfactor A - Management Approach | Excellent | Very Good |
| Subfactor B - Technical Approach | Good | Good |
| Subfactor C - Small Business Utilization | Excellent | Excellent |
| Mission Suitability (Total Points) | 850 | 798 |
| Past Performance Confidence | Very High | Very High |
| Probable Cost | \$88,493,562 | \$89,815,197 |

AR, Exh. 7, SSS at 4, 7, 9; AR, Exh. 6, Selection Evaluation Board (SEB) Report at 13, 23. In the tradeoff decision, NASA identified the management approach subfactor as a significant discriminator between the two proposals. AR, Exh. 7, SSS at 8.

On January 6, 2026, NASA notified offerors that it had selected ARES for the WRC award. COS at 4. After a.i. solutions requested and received a debriefing, it filed this protest.

OCI Investigation and Waiver

In its protest filed with our Office on January 26, a.i. solutions initially argued that ARES had a significant impaired objectivity OCI once ARES was awarded the SMAS III contract, which ARES failed to disclose in its OCI plan and NASA failed to avoid, neutralize, or mitigate.² Protest at 19-26, 32-37. In response to a.i. solutions' protest, NASA then conducted an investigation of the alleged OCI and requested that ARES submit a revised OCI plan. COS at 9; AR, Exh. 11A, WRC OCI Investigation.

In the revised OCI plan, submitted to the agency on February 6, ARES addressed the WRC and SMAS III contracts--but asserted that its performance on the WRC requirement "does not provide any oversight or review of [SMAS III contract] requirements [and] therefore no impaired objectivity conflict of interest concerns exist." AR, Exh. 11B, ARES Updated OCI Plan at 37. *Id.* Concerning the SMAS III contract, ARES's OCI plan indicated that it would perform "advisory and analytical safety and mission assurance support under Government direction[.]" so that performance on SMAS III "does not place ARES in a position to evaluate its own work or otherwise directly influence its own self-interest under WRC[.]" *Id.* ARES's revised OCI plan stated further that if NASA later identifies an actual or potential impaired objectivity OCI arising out of the intersection of WRC and SMAS III requirements, the conflict "will be mitigated through the specific SMAS III task order in accordance with the SMAS III OCI Avoidance Plan." *Id.* Finally, ARES's revised OCI plan informed the agency that "[n]o changes to WRC scope, roles, or performance are required." *Id.*

² The FAR requires that contracting officials avoid, neutralize, or mitigate potential significant conflicts of interest to prevent an unfair competitive advantage or the existence of conflicting roles that might impair a contractor's objectivity. FAR 9.504(a), 9.505. As relevant here, an impaired objectivity OCI exists where a firm's work under one government contract could entail evaluation of itself, either through an assessment of performance under another contract or an evaluation of proposals. See, e.g., *C2C Innovative Sols., Inc.*, B-416289, B-416289.2, July 30, 2018, at 10. The FAR also provides that, as an alternative to an agency's obligation to avoid, neutralize, or mitigate potential significant conflicts of interest, the agency head or a designee may execute a waiver determining that application of the FAR's OCI provisions in a particular circumstance is not in the government's interest. FAR 9.503; *ManTech Advanced Sys. Int'l, Inc.*, B-421749.4, *et al.*, Aug. 29, 2024, at 12. When an agency properly executes an OCI waiver, our Office will dismiss as academic a protest alleging an OCI. See, e.g., *MAG DS Corp. d/b/a/ MAG Aerospace*, B-423396.3 *et al.*, Feb. 2, 2026, at 5.

As part of its investigation, NASA analyzed the SOWs for both WRC and SMAS III. Following this review, NASA's SMAS III and WRC contracting officers³ determined that "there is a potential impaired objectivity OCI for ARES" in its performance of the SMAS III contract limited to a few tasks where ARES could be in the position of evaluating range operations and maintenance tasks at WRC. AR, Exh. 11A, WRC OCI Investigation at 5. *Id.* at 3-6. The contracting officers also determined that given the overall "lack of overlap between the WRC and SMAS III contracts, as well as the heavy involvement of NASA personnel" in the tasks that do overlap, "the risk of ARES evaluating its WRC work under the SMAS III contract is minimal." *Id.* at 6. Finally, the contracting officers recommended that the NASA head of contracting activity (HCA) waive the conflict "out of an abundance of caution and in the interest of efficiency and certainty." COS at 9; AR, Exh. 11A, WRC OCI Investigation at 7.

On February 20, after the contracting officers concluded the OCI investigation, NASA's HCA waived any OCIs associated with both the WRC and SMAS III contracts:

Notwithstanding the lack of any established impaired objectivity OCIs as described above, any potential remaining potential conflict between a single awardee holding the WRC contract and SMAS III contract is minimal and warrants waiver to ensure that NASA receives the best-value services as determined during the WRC and SMAS III source selections.

AR, Exh. 11C, OCI Waiver at 5.

Subsequently, NASA included the OCI waiver in the agency report filed with our Office and requested that we dismiss or deny all allegations challenging the agency's evaluation of ARES's alleged impaired objectivity OCI. Memorandum of Law (MOL) at 6 (citing AR, Exh. 11C, OCI Waiver). After receiving the agency report, the protester withdrew its allegation that the agency failed to resolve, neutralize, or mitigate the OCI created by the SMAS III contract award but, as discussed below, continued to advance other arguments related to the OCI allegations. Comments & Supp. Protest at 8, n.3.

DISCUSSION

a.i. solutions challenges numerous aspects of NASA's evaluation of proposals. The protester first contends that the agency should have rejected ARES's proposal based on a deficient OCI plan because ARES failed to notify NASA of the actual or potential conflict of interest caused by ARES receiving the SMAS III contract award. The protester also argues that NASA unreasonably and disparately evaluated proposals under the mission suitability evaluation factor and then conducted a flawed best-value

³ The contracting officer for the WRC requirement and the contracting officer for the SMAS III contract were each involved in the OCI investigation--and both contracting officers signed the OCI Investigation Memorandum. COS at 9; AR, Exh. 11A, WRC OCI Investigation at 8.

analysis when selecting the proposal submitted by ARES. For the reasons that follow, we deny a.i. solutions' protest.⁴

In reviewing protests challenging the evaluation of an offeror's proposal, our Office does not reevaluate proposals; rather, our Office examines the record to determine whether the agency's judgment was reasonable and in accordance with solicitation criteria and applicable procurement statutes and regulations. *Patriot Def. Group, LLC*, B-418720.3, Aug. 5, 2020, at 7. A protester's disagreement with the agency's assessment, without more, does not render the evaluation unreasonable. *The Ginn Group, Inc.*, B-420165, B-420165.2, Dec. 22, 2021, at 9.

OCI Plan Allegations

a.i. solutions broadly contends that, due to deficiencies in ARES's OCI plan, NASA was required to reject ARES's proposal as materially deficient. In this regard, a.i. solutions argues that the plan's failure to identify the SMAS III contract as a potential OCI constituted either a material misrepresentation or a failure to comply with material solicitation requirements. Protest at 27-32; Comments & Supp. Protest at 10-12. The protester further alleges that the agency engaged in improper and unequal discussions when NASA allowed ARES to submit a revised OCI plan as part of the agency's OCI investigation. Comments & Supp. Protest at 12-15. Finally, the protester asserts that, because the agency identified a potential OCI related to the SMAS III contract that could impact ARES's ability to perform the WRC requirement, the agency was required to reevaluate ARES's proposal to account for any mitigation measures. *Id.* at 16-19. None of the protester's arguments have merit. We address the protester's primary allegations in turn.

Material Deficiency and Material Misrepresentation in OCI Plan

⁴ a.i. solutions raises other collateral arguments. While our decision does not address every argument or iteration of each argument raised, we have considered them all and conclude that none provide a basis to sustain the protest. For example, in its initial protest, a.i. solutions alleged that NASA unreasonably evaluated ARES's technical approach proposal by assessing it with a strength for "cross range parts sharing[.]" Protest at 47-48. The protester postulated that the agency assessed this strength based on possible contributions from a specific ARES subcontractor, which the protester argued was unreasonable because the subcontractor no longer holds the contract upon which a.i. solutions presumed the strength was based. *Id.* In response to the intervenor's request for dismissal, our Office indicated our intent to dismiss this allegation. See GAO Ruling on Partial Dismissal Req. at 1. In this regard, we found that a.i. solutions' allegation was supported only by speculation and inference and thus failed to meet the requirements of our Bid Protest Regulations. 4 C.F.R. § 21.1(c)(4), (f); *Warfighter Focused Logistics, Inc.*, B-423546, B-423546.2, Aug. 5, 2025, at 4.

First, a.i. solutions argues that the terms of the solicitation required ARES to disclose the potential OCI related to ARES's simultaneous performance of the WRC and SMAS III requirements. The protester further contends that NASA was required to reject ARES's proposal as materially deficient and ineligible because the proposal failed to disclose this potential conflict. Finally, a.i. solutions maintains that ARES's failure to disclose the potential OCI constitutes a material misrepresentation that renders ARES's proposal ineligible for award. Protest at 27-32.

A proposal that fails to conform to a material solicitation requirement is technically unacceptable and cannot form the basis for award. *Peraton, Inc.*, B-417358, B-417358.2, June 11, 2019, at 7. In addition, our Office has explained that exclusion of an offeror from a competition is warranted where the offeror made a material misrepresentation in its proposal and where the agency's reliance on the misrepresentation had a material effect on the evaluation results. See, e.g., *Patricio Enters., Inc.*, B-412738, B-412738.2, May 26, 2016, at 15 (“[W]here an offeror's material misrepresentation has a material effect on a competition, the integrity of the procurement system ‘demands no less’ than the remedy of exclusion.”). To prevail on a claim of material misrepresentation, however, the record must show that the information at issue is false. *Lightbox Parent, LP*, B-420032.2 *et al.*, Feb. 24, 2022, at 10.

As noted above, the solicitation required offerors' proposals to include OCI plans that addressed various criteria. RFP at 101, 138; RFP, attach. S, OCI Plan at 1-3. For example, OCI plans were required to include a list of all the prime contractor's and subcontractors' NASA contracts and subcontracts to “provide the [contracting officer] a better understanding of other NASA work performed by the Offeror that may give rise to an actual or potential conflict.” *Id.* at 2. Offerors were also instructed to “identify the strategy (e.g., mitigation, limitation on future contracting, etc.) for resolving each OCI that is either identified in the solicitation or created by the requirements of the solicitation/contract and explain the effect of such strategy on performance of the contract.” *Id.* The solicitation explained, however, that if an offeror did not believe it currently had any OCIs, the offeror should include a statement in the OCI plan “that to the best of their knowledge no OCIs exist currently, if applicable.” *Id.*

The record shows that the agency determined that ARES's final revised proposal included the required OCI plan, which listed all of the firm's NASA contracts and subcontracts held as of the final proposal submission date. COS at 9; AR, Exh. 5B, ARES OCI Plan at 27-35. In its OCI plan, ARES also noted the following: “ARES has conducted an OCI sweep prior to proposal submittal and have confirmed that to the best of our knowledge, no conflicts of interest currently exist.” AR, Exh. 5B, ARES OCI Plan at 4.

a.i. solutions contends that this statement was a misrepresentation because at the time ARES submitted its final revised proposal, ARES knew or should have known that it had a potential OCI arising from the intersection of the WRC and SMAS III requirements. Protest at 27-32; Comments & Supp. Protest at 10-11. The protester asserts that the

terms of the RFP required ARES to identify this potential OCI in its OCI plan. *Id.* a.i. solutions argues that the agency was therefore required to reject ARES's proposal as materially deficient because the OCI plan did not include any reference to, or strategy for addressing, the potential OCI created by the SMAS III contract. *Id.*

The agency responds that ARES's OCI plan met solicitation requirements and did not include any misrepresentations. In this regard, the agency argues that the omission of the SMAS III contract from the OCI plan did not constitute a material misrepresentation because at the time final revised proposals were due, ARES had not yet been awarded the SMAS III contract--and the RFP instructed offerors to identify all OCIs an offeror had "currently." MOL at 3. Finally, the agency contends that because NASA's HCA waived all OCIs, a.i. solutions cannot demonstrate that any alleged misrepresentation in ARES's OCI plan was material to the agency's evaluation and source selection decision. *Id.* at 5. We agree with the agency.

First, we see no support in the record for the argument that ARES's OCI plan was inaccurate or failed to meet solicitation requirements. Contrary to a.i. solutions' assertions, the solicitation did not obligate offerors to list all *proposals* submitted to NASA that might lead to contract awards and potential OCIs. Nor do we see any requirement in the solicitation obligating offerors to identify potential OCIs arising out of contracts not yet awarded. We likewise reject the argument that the solicitation required, as a condition of eligibility, that offerors' OCI plans accurately determine whether a future contract award could give rise to a potential OCI. Instead, the RFP required offerors to submit OCI plans representing that, to the best of their knowledge, no OCIs exist currently. RFP, attach. S, OCI Plan at 2. The solicitation also requested that offerors provide a list of all current NASA contracts and subcontracts. *Id.* Here, the agency determined that ARES's OCI plan complied with these requirements. COS at 9. With respect to the possibility that ARES might be awarded the SMAS III contract, NASA explained that

given the closely parallel award schedule for SMAS III and WRC, it was reasonable for ARES to not consider the award of either SMAS III or WRC in its original proposals at the time of submission, because neither contract had been awarded yet and therefore no OCI could exist at the time of proposal submission.

AR, Exh. 11A, WRC OCI Investigation at 5.

We see no basis to question NASA's judgment. As the agency correctly notes, ARES was not awarded the SMAS III contract award until March 17, 2025--which is nearly six weeks after final revised WRC proposals were due, on February 5. On this record, we find no merit to the protester's argument that ARES's OCI plan was inaccurate, when submitted, or that the agency was required to reject ARES's proposal for failing to include information required by the solicitation. *See Accenture Federal Svcs., LLC*, B-423859, B-423859.2, Jan. 16, 2026, at 9 (rejecting protester's argument that the agency was required to reject the awardee's proposal for failing to submit an OCI

mitigation plan when awardee did not submit a mitigation plan because it represented in good faith that it did not have any unmitigated OCIs).

Second, we reject the protester's argument that the solicitation constrained NASA's ability to exercise reasonable discretion when assessing OCI plans and determining an offeror's eligibility. As noted above, the solicitation stated that OCI plans would be assessed as an eligibility standard, which was separate from the solicitation's source selection and evaluation factors. RFP at 138-147. Reading the solicitation as a whole, we find that this eligibility assessment "is analogous to a responsibility determination." See *Overlook Sys. Technologies, Inc.*, B-298099.4, B-298099.5, Nov. 28, 2006, at 20. Further, we see no solicitation provision that *required* the agency to reject ARES's proposal as ineligible, even if we agreed with the protester's contention that the OCI plan omitted a potential OCI. Instead, as noted above, the solicitation's eligibility provisions contemplated further communications with offerors about their OCI plans, if necessary, and these communications would be accomplished "outside of the evaluation process." RFP at 138. It is only if the proposed OCI plan "cannot be made acceptable to the Government" that "the offeror will be considered ineligible for award." *Id.* Here, we conclude that the agency reasonably exercised its discretion in determining that ARES's proposal was eligible for award.

We also find the protester's material misrepresentation allegation to be unavailing. In this regard, even if we agreed that ARES was required to notify NASA of the potential OCI (either in its final revised proposal or after it received the SMAS III award), we would still have no basis to conclude that any alleged misrepresentation had a material impact on the evaluation. We note that a.i. solutions raises a nearly identical protest allegation to the argument our Office recently considered and rejected in *MAG Aerospace, supra* at 7-8.

In *MAG Aerospace*, the protester alleged that the agency's OCI waiver did not dispose of the protester's argument that the awardee "made material misrepresentations in its proposal regarding potential OCIs." *Id.* Relevant to this claim, the solicitation required an "OCI Declaration/Mitigation Plan," in which the offeror was to address "all actual or potential OCI situations" or state that "there are no known actual or potential OCIs." *Id.* In its proposal, the awardee stated that to the best of its knowledge and belief, there were no known actual or potential OCIs. *Id.* The protester insisted that the awardee had unmitigable OCIs "or at the very least potential OCIs," and argued that the statement in the awardee's proposal constituted a material misrepresentation rendering the proposal unacceptable. *Id.* We rejected the protester's argument, however, noting that it would serve no useful purpose for our Office to "analyz[e] the question of whether [the awardee] does or does not have an OCI where, as here, the agency has waived all the potential OCIs identified by the protester." *Id.* Our Office further noted that even assuming there were misstatements in the awardee's OCI affirmation, "the agency's execution of an OCI waiver indicates the [agency] does not consider the possible existence of any of the OCIs identified by the protester to be a factor materially influencing the evaluation." *Id.* at 8. Accordingly, we denied the protester's material misrepresentation allegation because the protester could not demonstrate that any

alleged misrepresentation in the OCI plan would have had a significant impact on the agency's evaluation and source selection decision. *Id.*

We reach the same result here. In this regard, we deny the protester's arguments that ARES's OCI plan included a material misrepresentation and failed to satisfy solicitation requirements. At bottom, a.i. solutions' various arguments rest on the premise that ARES's OCI plan was required to identify the potential OCI that the protester initially asserted should be disqualifying--and that the agency later waived. In effect, a.i. solutions contends that, notwithstanding an agency's waiver of all conflicts or potential conflicts, an offeror will remain ineligible for award if its OCI plan failed to notify the agency of a potential OCI that is later attributed to the offeror. As noted above, we see no support for this argument in the solicitation language. In addition, as in *MAG Aerospace*, we see no useful purpose in analyzing whether ARES's proposal should have notified NASA of the specific potential OCI that the NASA HCA later waived. Accordingly, we deny all allegations that the agency was required to reject ARES's proposal as ineligible under the terms of the solicitation.⁵

Discussions

Next, a.i. solutions argues that NASA engaged in improper and unequal discussions when it requested an updated OCI plan from ARES during the agency's post-award OCI investigation. The protester contends that the agency's request for a revised OCI plan from ARES was a "*post-hoc* attempt to make ARES's materially deficient proposal retroactively compliant with the [s]olicitation requirements," which amounted to improper discussions with a single offeror. Comments & Supp. Protest at 12, 15.

The FAR explains that discussions occur when an agency communicates with an offeror for the purpose of obtaining information essential to determine the acceptability of a proposal or provides the offeror with an opportunity to revise or modify its proposal. See, e.g., *Highmark Medicare Servs., Inc., et al.*, B-401062.5 *et al.*, Oct. 29, 2010, at 11; see FAR 15.306(d). As a general matter, if an agency holds discussions with one offeror, it must hold discussions with all offerors. *Id.*

⁵ The protester also argues that even if ARES was not required to disclose the potential OCI in its final revised proposal on February 5, ARES's disclosure obligation arose once ARES received the SMAS III award on March 17. Comments & Supp. Protest at 11-12. This argument does not provide a basis to sustain the protest. As noted above, we do not agree with a.i. solutions' argument that the RFP's eligibility provisions required ARES to identify the SMAS III contract to satisfy a material solicitation requirement. Further, we see no support for the argument that NASA's evaluation of ARES's proposal relied on any alleged omission in the OCI plan. Nor do we see any basis to find that the results of the agency's evaluation of ARES's proposal would have changed had ARES updated its OCI plan to include the specific potential OCI that was subsequently waived by the NASA HCA. See *MAG Aerospace, supra* at 8. We note, as discussed below, that when ARES's OCI plan was updated to address the SMAS III contract, it resulted in no changes to ARES's technical or price proposals.

On the other hand, where an agency conducts exchanges with an offeror regarding the offeror's plan to mitigate identified conflicts of interest, we have generally held that such communications do not constitute discussions, and as a consequence, do not trigger the requirement to hold discussions with other offerors. See, e.g., *Cahaba Safeguard Administrators, LLC*, B-401842.2, Jan. 25, 2010, at 10. Rather, exchanges concerning conflicts of interest are more closely related to matters concerning the offeror's responsibility. *Id.* Conversely, our Office has also recognized that exchanges in the context of OCI mitigation may still constitute discussions, under FAR part 15.306, if the exchanges "result in material changes to an offeror's proposal in terms of its technical approach or price." See *Cahaba Safeguard Administrators, LLC, supra*, at 10, n. 8; see also *Deloitte Consulting, LLP*, B-422094, B-422094.2, Jan. 18, 2024, at 9-10 (finding that the agency's exchanges on OCI mitigation measures were discussions because the exchanges resulted in changes to the awardee's method of performance and transformed an unacceptable proposal into an acceptable one).

Here, NASA contends that the exchanges with ARES were limited to seeking revisions to ARES's proposed OCI plan as part of the agency's OCI investigation. In this regard, the agency argues that its exchanges with ARES were consistent with the terms of the solicitation and FAR 9.504(e)--both of which contemplate limited, post-award exchanges relating to OCI matters. Accordingly, the agency argues that it had no obligation to conduct discussions with other offerors when the exchanges with ARES were limited to ARES's OCI plan and ARES made no changes to its technical approach or price proposal. Supp. MOL at 8-9. We agree with the agency and deny this allegation.

As noted above, NASA requested, and ARES provided, an updated OCI plan as part of the agency's post-award OCI investigation. COS at 9. In ARES's revised OCI plan, it identified the SMAS III contract, but indicated that "no impaired objectivity conflict of interest concerns exist" for the WRC project because the WRC SOW "does not provide any oversight or review of [SMAS III contract] requirements[.]" AR, Exh. 11B, ARES Updated OCI Plan at 37. ARES's updated OCI plan also included the following statement: "No changes to WRC scope, roles, or performance are required." *Id.* Beyond providing these updates to ARES's OCI plan, there is nothing in the record showing that ARES changed any other aspect of its proposal. Nor is there any indication that the agency's assessment of ARES's updated OCI plan transformed its proposal from "unacceptable" to "acceptable." On this record, we find that NASA's exchanges with ARES did not constitute discussions under FAR 15.306(d). See *Cahaba Safeguard Administrators, LLC, supra*, at 10; see also *Overlook Sys. Technologies, Inc., supra* at 20 (noting that exchanges between the agency and the awardee "regarding the mitigation plan did not result in changes to the company's proposal, which, as indicated above, is the acid test for determining whether discussions have occurred").

To the extent a.i. solutions maintains that ARES's submission of an updated OCI plan *necessarily* constituted a material proposal change that transformed an unacceptable proposal into an acceptable one, we continue to see no support for this argument. As

noted above, the solicitation indicated that NASA “may communicate with offerors about the [OCI plan] eligibility requirement [] outside of the evaluation process” and “[t]his communication does not constitute discussions as defined in FAR 15.306.” RFP at 138. The solicitation thus expressly notified offerors that the agency may communicate with offerors about the OCI plan eligibility requirement “outside of the evaluation process.” *Id.* These solicitation provisions, and the agency’s subsequent exchanges with ARES about ARES’s OCI plan, are also entirely consistent with FAR section 9.504(e), which provides:

The contracting officer shall award the contract to the apparent successful offeror unless a conflict of interest is determined to exist that cannot be avoided or mitigated. Before determining to withhold award based on conflict of interest considerations, the contracting officer shall notify the contractor, provide the reasons therefor, and allow the contractor a reasonable opportunity to respond.

FAR 9.504(e); *see also Cahaba Safeguard Administrators, LLC, supra*, at 10 (noting that FAR section 9.504(e) contemplates a review after evaluations are completed and after an apparent awardee has been identified and does not suggest opening discussions with all offerors). Consequently, because the agency’s communication with ARES was limited to ARES’s OCI plan, the agency was not required to open discussions with a.i. solutions. This allegation is denied.

Failure to Re-evaluate Technical Proposal

a.i. solutions also contends that because the agency determined that ARES has a potential OCI connected to the SMAS III and WRC contract requirements, NASA was required to reconsider its evaluation of ARES’s proposal under the mission suitability factor. Comments & Supp. Protest at 16-20. In this regard, the protester argues that NASA failed to evaluate the impact of the potential OCI (including any mitigation measures adopted to address the potential OCI) on the rest of ARES’s proposal. *Id.* at 17-18.

Our Office has explained that agencies are required to consider the effect that a firm’s OCI mitigation measures have on its technical approach, and whether any mitigation measures either directly contradict the firm’s proposed technical approach or otherwise call into question the agency’s original evaluation conclusions concerning the merit of the approach. *ARES Technical Servs. Corp.*, B-415081.2, B-415081.3, May 8, 2018, at 6; *see also emissary LLC*, B-422388.3, B-422388.4, Jul. 29, 2025, at 13. For example, in *ARES Technical Servs. Corp.*, our Office sustained a protest because the awardee’s OCI mitigation strategy changed its technical approach and the agency failed to reconcile this change with the agency’s initial evaluation of the awardee’s proposal. *ARES Technical Servs. Corp.*, *supra* at 5. There, the protester demonstrated that the awardee’s proposed OCI mitigation measures made several significant changes to the awardee’s organizational structure, which the agency failed to consider. *Id.* at 5-7. Similarly, in *emissary, LLC*, our Office sustained a protest after the protester

demonstrated that the awardee's OCI mitigation plan altered the management structure in its technical approach, which the agency failed to consider. *emissary LLC, supra* at 13-14.

Here, by contrast, the record shows that ARES's revised OCI plan did not propose any mitigation measures or otherwise alter its proposal in any way. ARES's updated OCI plan instead asserted that the firm had no impaired objectivity conflicts related to the WRC project because the WRC SOW did not involve any oversight or review of any task under the SMAS III contract. AR, Exh. 11B, ARES Updated OCI Plan at 37. As a result, ARES stated that no changes to the WRC scope, roles, or performance were required. *Id.* On this record, we have no reason to question the agency's original evaluation conclusions concerning the merits of ARES's proposed approach.

We likewise see no support for the protester's argument that the agency's proposed mitigation measures undermine NASA's original evaluation conclusions. As noted above, the agency's OCI investigation did not find any potential OCIs affecting ARES's work under the WRC project because the WRC SOW does not include tasks that supervise or evaluate contractor performance. AR, Exh. 11A, WRC OCI Investigation at 5. Instead, NASA recognized that a potential impaired objectivity OCI could arise if a task order under the SMAS III contract involved providing assessments of work performed on the WRC project. *Id.* at 5-6. For mitigation measures, therefore, NASA indicated that "[a]ny potential conflicts between WRC and SMAS III will be individually assessed on a task order basis under SMAS III[.]" which could include, for example, "using other NASA contract vehicles for [safety and mission assurances] tasks at [the Wallops Flight Facility]." *Id.* at 7.

The protester suggests that, "[i]n essence," NASA's mitigation measures intend to "pull" the maintenance and sustainment work required under WRC "from the scope of ARES's performance" under the WRC contract on a task order by task order basis. Comments & Supp. Protest at 17. We see no support for this inference anywhere in the record. Nor does this interpretation make sense given the requirements in the WRC SOW and the agency's conclusions that any potential impaired objectivity OCI concerned the SMAS III contractor potentially overseeing discrete tasks performed by the WRC contractor. AR, Exh. 11A, WRC OCI Investigation at 5-6. Instead, we agree with the agency that "the entirety of the OCI investigation memorandum discusses mitigation measures related to [SMAS III] tasks and makes no references to any changes to maintenance and sustainment under the Wallops Range Contract." Supp. MOL at 11. In sum, we find unpersuasive a.i. solutions' various assertions that the agency's proposed mitigation measures--all of which relate to future requirements that may be issued as task orders *under the SMAS III contract*--contradict ARES's proposed approach or otherwise call into question the agency's evaluation conclusions. This allegation is denied.

Mission Suitability Evaluation

a.i. solutions additionally challenges NASA's evaluation of proposals under the solicitation's most heavily weighted evaluation factor, mission suitability. In this regard, the protester asserts that the agency should have assigned multiple additional strengths to a.i. solutions' proposal under both the management approach and technical approach subfactors. Based on our review of the record, we find no merit to the protester's allegations. Below we address the protester's arguments under the two challenged mission suitability subfactors.

Management Approach

The protester first contends that the agency unreasonably and disparately evaluated ARES's and a.i. solutions' proposals under the management approach subfactor. In support of this argument, the protester cites various strengths the agency assessed in ARES's proposal and argues that the agency unreasonably failed to credit a.i. solutions' proposal for "the same meritorious proposal elements[.]" Protest at 37-47; Comments & Supp. Protest at 21-36.

It is a fundamental principle of federal procurement law that agencies must treat all offerors equally and evaluate their proposals evenhandedly against the solicitation's requirements and evaluation criteria. *NTT Data Servs. Fed. Gov't, LLC*, B-421708.3, B-421708.4, Nov. 27, 2023, at 10. To prevail on an allegation of disparate treatment, a protester must show that the agency unreasonably downgraded or failed to credit its proposal for aspects that were substantively indistinguishable from, or nearly identical to, those contained in other proposals. *Battelle Mem'l Inst.*, B-418047.3, B-418047.4, May 18, 2020, at 5 (citing *Office Design Grp. v. United States*, 951 F.3d 1366, 1372 (Fed. Cir. 2020)).

We have reviewed all of a.i. solutions' allegations of disparate treatment and find no basis to sustain the protest. We address two representative examples below.

As a first example, the protester argues that the agency evaluated proposals disparately by assessing a strength for ARES's proposed "incentive programs" without also assigning a strength to the "very similar" incentive programs proposed by a.i. solutions. Protest at 39; Comments & Supp. Protest at 21-26. As relevant to this allegation, NASA assigned a strength for ARES's proposed use of two employee incentive programs. AR, Exh. 6, SEB Report at 26. Specifically, the agency highlighted ARES's "Shark-Tank" program, which gives employees the [DELETED] as [DELETED]. *Id.* The agency also recognized ARES's [DELETED] program, which offers [DELETED] to reward [DELETED] and [DELETED]. *Id.* The record shows that ARES's proposal was assigned a strength because these programs incentivize employees to [DELETED] the WRC program. *Id.*; COS at 7.

The protester argues that the agency's evaluation was unreasonable and disparate because NASA failed to credit a.i. solutions' similar incentive program. a.i. solutions contends that it similarly proposed a [DELETED] plan that includes a [DELETED] program designed "to encourage, reward, and recognize employee excellence and

dedication, and to stimulate employee participation in improving the efficiency and economy of the services provided to our customers.” Protest at 39-40 (citing AR, Exh. 4B, a.i. solutions Proposal at 136). The protester also notes that a.i. solutions proposed the use of its [DELETED] program, a process used to [DELETED] to facilitate continual process improvement. Comments & Supp. Protest at 23 (citing AR, Ex. 4B, a.i. solutions Proposal at 1, 17). The protester argues that it was unreasonable for NASA to “ignore[] the broad nature of a.i. solutions’ [DELETED] program” used “throughout its management and staffing approaches[,]” while assigning a strength to “a much more limited approach [proposed] by ARES[.]” Comments & Supp. Protest at 26.

The agency contends that the differences in the evaluation stemmed from differences between the proposals. NASA explains that it assigned a strength for ARES’s incentive programs because the two programs explicitly [DELETED] and thoroughly explain how the incentive programs would benefit the WRC program. COS at 5-6; Supp. MOL at 12; Supp. COS at 1-2 (citing AR, Exh. 6, SEB Report at 33). The agency contends that the incentive plan proposed by a.i. solutions, in contrast, is more generally focused on employee performance, not encouraging innovation, and “is not at all unique to a.i., WRC, or the overall requirement[.]” COS at 6; MOL at 9-10. The agency further explains that a.i. solutions’ [DELETED] program “is not an incentive program” and there are no rewards involved. Supp. COS at 1-2.

Based on our review of the record, we agree with the agency that the protester has not demonstrated disparate treatment. Although a.i. solutions also proposed an employee rewards program, it did not demonstrate that the program is substantively indistinguishable or nearly identical to the incentive programs proposed by ARES. Specifically, the protester fails to demonstrate, or even allege, that a.i. solutions’ rewards and recognition program is structured to reward employees for innovative contributions, similar to ARES’s [DELETED] and [DELETED] programs. In addition, as the agency correctly points out, although a.i. solutions’ [DELETED] program focuses on identifying process improvements and encouraging innovations, the [DELETED] program is not an incentive program that explicitly rewards employees for suggesting innovations or process improvement. Nor does the protester meaningfully argue otherwise. Finally, the record shows that NASA also assessed the strength based on ARES’s [DELETED]. AR, Exh. 6, SEB Report at 26. The protester fails to account for this fact or identify anything in a.i. solutions’ proposal that is substantively indistinguishable from this aspect of ARES’s proposal, which the agency contemporaneously cited as further justification for the strength. *Id.* On this record, the protester has not shown that the agency unfairly or unequally evaluated a.i. solutions’ proposal. See *Battelle Mem’l Inst., supra*, at 5.

As a second example, the protester argues that NASA unreasonably and disparately evaluated the offerors’ approaches to “concurrent operations.” Protest at 40. Relevant to this allegation, the agency assigned a strength in ARES’s proposal for “its effective approach to concurrent operations and parallel reconfiguration, staggered shifts, and ARES GO-Teams[.]” AR, Exh. 7, SSS at 5. The protester contends that the agency assessed this strength “while unreasonably and unequally ignoring a very similar

approach from a.i. solutions to managing competing program requirements and the maintenance and sustainment of range assets[.]” Comments & Supp. Protest at 28.

NASA again contends that differences in the evaluation results stem from clear differences in the offerors’ proposals. The agency notes that the evaluation record includes detailed and specific support for the strength assessed for ARES’s concurrent operations, and that a.i. solutions’ proposal did not include any of these proposal attributes. COS at 6 (citing AR, Exh. 5A, ARES Proposal at 22-25, 46-48). For example, the assessed strength cited ARES’s proposed use of [DELETED] and the use of “Go-Teams” to [DELETED]. AR, Exh. 6, SEB Report at 29. The agency also highlighted ARES’s use of “staggered shifts” to [DELETED]. *Id.* In sum, the agency argues that ARES’s proposal included specific solutions that would increase the likelihood of successful contract performance. COS at 6. In contrast, a.i. solutions’ proposal explained the “management process and task lines of reporting” without providing specific solutions, which NASA did not view as meriting a strength. *Id.*

In our review of the record, we see no basis to question the agency’s conclusions about the relative merits of the two proposals’ approaches to concurrent operations. As an initial matter, we note that a.i. solutions’ protest fails to demonstrate how any aspect of its proposal is substantively indistinguishable to the specific proposal attributes the agency identified in ARES’s proposal. Instead, as the agency points out, the protester simply excerpts long passages of its management approach proposal and asserts that the agency disparately evaluated the offerors’ “very similar approaches[.]” See Protest at 40-42; Comments & Supp. Protest at 28-32. More is required to sustain this protest. See, e.g., *Kayhan Space Corp.*, B-423221; B-423221.2, March 12, 2025, at 6-7 (denying protest alleging disparate treatment when protester only generally asserted that proposals were similar but failed to specify what aspects of awardee’s proposal were allegedly similar to its own).

On this record, we are not persuaded by a.i. solutions’ contention that the agency unreasonably evaluated the two proposals--particularly when the protester makes no meaningful attempt to explain how the various features in its proposal are substantively indistinguishable or nearly identical to the features in ARES’s proposal to which the agency assigned strengths. See *id.* This protest ground is denied.

Technical Approach

The protester also challenges the evaluation of its proposal under the technical approach subfactor. Specifically, the protester alleges that NASA “improperly bundl[ed]” various positive aspects of a.i. solutions’ technical approach into a single strength--thereby reducing their evaluative value. Protest at 47-51. The protester further contends that the solicitation required NASA to assign multiple, distinct strengths in a.i. solutions’ proposal because its single strength “involved multiple facets[.]” We see no merit to this argument.

As relevant here, the agency rated a.i. solutions' proposal under the technical approach subfactor as "Good" with "no significant strengths, one [] strength, no weaknesses, no significant weaknesses, and no deficiencies." AR, Exh. 7, SSS at 5. For the single strength, the agency cited a.i. solutions' "effective and efficient iterative maintenance and sustainment planning strategy." *Id.* The evaluation record contained additional detail supporting this finding, acknowledging, for example, the benefits of a.i. solutions sustaining an [DELETED] plan, [DELETED], [DELETED], and using a process that focuses [DELETED] on the [DELETED] solutions. AR, Exh. 6, SEB Report at 17.

The protester contends that the solicitation required NASA to recognize each of these proposal elements as separate, individual strengths. In support of this argument, a.i. solutions notes that the solicitation defined a "strength" as "an aspect of the proposal that will have some positive impact on the successful performance of the contract." RFP at 143. Because the agency's evaluation record cited each of these elements as a positive aspect of a.i. solutions' proposal, the protester contends that the agency should have acknowledged each positive comment as an individual strength. Protest at 48-51.

An agency's judgment that the features identified in a proposal do not exceed the requirements of a solicitation or provide advantages to the government warranting the assessment of a strength is a matter within the agency's discretion, which we will not disturb unless a protester shows the evaluation was unreasonable. *Brandan Enters., Inc.*, B-423385, June 16, 2025, at 4 n.3. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. *Id.*

Based on our review of the record, we find the agency's evaluation here to be unobjectionable. In short, we see no basis to find that NASA was required to mechanically assign strengths whenever a proposal feature was mentioned positively in the evaluation record.⁶ Instead, the solicitation's definition⁶ of a strength allowed the evaluators to make qualitative assessments regarding the relative value of proposal attributes. The agency reasonably explains that it did not consider each favorably evaluated element to be a stand-alone strength, and instead found that the combination of attributes represented a favorable maintenance and sustainment planning strategy that merited a strength. COS at 8. We see no basis to question the agency's evaluation judgment. See *Carlsbad Operations All., LLC*, B-420913.2, B-420913.5, Nov. 8, 2022, at 7 ("It is not unreasonable for an agency to conclude that not every positive feature of a proposal identified in its evaluation represents a separate strength.").⁷

⁶ Although a.i. solutions contends that the agency was obligated to assign multiple, individual strengths, a.i. solutions fails to demonstrate, or even allege, that such a designation would automatically translate into a higher adjectival rating or a higher overall point total for this subfactor under the RFP's evaluation scheme.

⁷ We note that the agency applied this same approach when evaluating ARES's proposal. For example, as noted above, ARES was assigned a single strength for its
(continued...)

Best-Value Determination

As a final matter, the protester argues that NASA's best value tradeoff decision was improper because it was based on an unreasonable and unequal evaluation. Protest at 51-52. This allegation is derivative of the protester's challenges to the agency's evaluation of proposals and conduct of discussions. As discussed above, the protester has not demonstrated that NASA's evaluation or conduct of discussions was unreasonable or inconsistent with the solicitation. Accordingly, we dismiss this allegation because derivative allegations do not establish an independent basis of protest. *MAG Aerospace, supra* at 20.

The protest is denied.

Edda Emmanuelli Perez
General Counsel

approach to "concurrent operations[.]" even as the agency identified multiple positive aspects of that approach. COS at 8; AR, Exh. 6, SEB Report at 29.