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# Decision

**Matter of:** Will Technology, Inc.; Paragon TEC, Inc.

**File:** B-413139.4; B-413139.5; B-413139.6

**Date:** June 11, 2018

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## DIGEST

1. Previously withdrawn allegations challenging the agency's evaluation of protester's proposal are dismissed where protester's proposal was not reevaluated during corrective action.
  2. Protest that discussions were inadequate is denied where during a reevaluation, rating assigned to protester's proposal was revised due to the loss of a significant strength rather than due to the assignment of a weakness.
  3. Protests are sustained where record demonstrates, and agency concedes, that proposals were evaluated unequally due to application of higher standards to representations made in protesters' proposals while information in awardee's proposal was accepted at face value.
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## DECISION

Will Technology, Inc., (WTI) a small business of Huntsville, Alabama, and Paragon TEC, Inc., a small business of Cleveland, Ohio, protest the National Aeronautics and Space Administration's (NASA) decision to award a contract to Canvas, Inc., a small business of Huntsville, Alabama, pursuant to request for proposals (RFP)

No. NNM16534124R for acquisition and business support services. The protesters challenge various aspects of the agency's evaluation of proposals.

We dismiss the protests in part, deny them in part, and sustain them in part.

## BACKGROUND

On February 16, 2016, the agency issued the solicitation as a total woman-owned small business set-aside for a variety of acquisition and business support services (ABSS) to various NASA facilities.<sup>1</sup> Agency Report (AR), Tab 2, RFP at 54, 196. The competition was conducted pursuant to the procedures of Federal Acquisition Regulation (FAR) part 15, and the solicitation contemplated the award of a fixed-price, indefinite-delivery, indefinite-quantity (IDIQ) contract. Id. at 7, 276

Proposals had to demonstrate the ability to successfully satisfy the RFP's requirements and were to be evaluated on the basis of the following three factors: mission suitability; past performance; and price.<sup>2</sup> Id. at 194, 196, 200, 210. As relevant here, the mission suitability factor was made up of the following subfactors: management approach and staffing approach.<sup>3</sup> Id. at 197. Under the management approach subfactor, offerors had to discuss their proposed phase-in plans, their management and supervisory structure, the degree of autonomy they planned to provide to their program managers (PM), and identification of any subcontractors they planned to use. Id. at 197-199. Under the staffing approach subfactor, offerors had to propose their approaches to staffing, recruiting, and retaining a qualified workforce to perform the solicitation's requirements. As part of the staffing approach, offerors had to describe the qualifications of the PM being proposed along with the offerors' recruitment and retention plan. Id. at 199-200.

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<sup>1</sup> The agency prepared one report for both protests using a sequential numbering system. Citations to the record, where applicable, use the sequential numbers assigned by the agency.

<sup>2</sup> The RFP informed offerors that award would be made using a best-value tradeoff process. Id. at 276. The mission suitability, past performance, and price factors were considered to be equal to each other. Id. When combined, the mission suitability and past performance factors were significantly more important than price. Id.

<sup>3</sup> For mission suitability, proposals were to be evaluated to assess an offeror's understanding of the requirements identified under the management approach and staffing approach subfactors, with each subfactor to be assigned both an adjectival rating and numerical point score. Id. at 277.

Offerors could receive a maximum of 550 points under the management approach subfactor and 450 points under the staffing approach subfactor.<sup>4</sup> Id. at 277. The numerical weights assigned to the two subfactors were reflective of their relative importance. Id.

Past performance was to be evaluated for the quality of an offeror's overall relevant past performance under previously performed contracts that were comparable in size, content, complexity, and contract type, as compared to the RFP's requirements. Id. at 281-282. Proposals could be assigned one of the following adjectival confidence ratings for past performance: (1) very high; (2) high; (3) moderate; (4) low; (5) very low; or (6) neutral. AR, Tab 120, Second Final Findings Presentation, at 6419.

An offeror's total price was to be evaluated based on a formula identified in the RFP. Id. at 281. This formula took into consideration labor categories, labor hours, and the fully burdened composite labor rate and contract burden for each labor category. Id. at 280.

The agency received 20 proposals in response to the solicitation. Contracting Officer (CO) Statement (COS) at 9. Three proposals were removed from the competition before being evaluated by the agency.<sup>5</sup> AR, Tab 59, Initial Findings Presentation, at 3202. A source evaluation board (SEB) evaluated the remaining 17 proposals and concluded that NASA should establish a competitive range so that the agency could open discussions with the five offerors identified by the SEB as having the most highly rated proposals. COS at 16. The proposals submitted by Paragon, WTI, and Canvas were among those selected to be in the competitive range. Id.

The SEB identified the significant weaknesses and deficiencies of the remaining proposals and relayed them to offerors in discussion letters dated May 15, 2017. Id. Offerors were given an opportunity to address the concerns raised by the agency in final proposal revisions (FPR), which were due by June 12. Id. The SEB evaluated the final revisions submitted by each offeror and assigned the following final ratings to the proposals submitted by WTI, Paragon and Canvas:<sup>6</sup>

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<sup>4</sup> Proposals could be assigned one of the following adjectival ratings for each subfactor: (1) excellent; (2) very good; (3) good; (4) fair; or (5) poor. AR, Tab 120, Second Final Findings Presentation, at 6418.

<sup>5</sup> One proposal was removed because it was not submitted before the solicitation's closing date, the second was removed due to concerns related to an organizational conflict of interest, and the third was removed due to an active exclusion record in the System for Award Management. AR, Tab 59, Initial Findings Presentation, at 3202.

<sup>6</sup> All five offerors in the competitive range submitted their FPRs by the agency established due date. COS at 16. This decision only identifies the final evaluation ratings assigned to WTI, Paragon, and Canvas, because the ratings of the other two proposals are not relevant to this decision.

	WTI	Paragon	Canvas
<b>Mission Suitability Overall</b>	694	704	699
<b>Management Approach</b>	Very Good / 424	Good / 330	Good / 330
<b>Staffing Approach</b>	Good / 270	Very Good / 374	Very Good / 369
<b>Past Performance</b>	Neutral	High	Moderate
<b>Price</b>	\$56,216,812	\$57,113,185	\$55,081,857

AR, Tab 102, Final Presentation to Source Selection Authority (SSA), at 5750, 5781, 5784.

The SEB presented its findings to the SSA on June 30. COS at 19. On August 1, the SSA selected Paragon as the awardee and documented the rationale for his decision in a source selection statement. Id.; AR, Tab 103, First Source Selection Statement, at 5824-5832. Offerors were notified by phone of NASA's award decision on August 3. COS at 19. The agency provided WTI with a written debriefing letter dated that same day. AR, Tab 108, WTI's First Debriefing, at 5912. Shortly thereafter, on August 14, WTI filed its first protest with our Office. AR, Tab 109, WTI's First Protest, at 5931. Among the various challenges raised in WTI's first protest were allegations that NASA unreasonably evaluated WTI's past performance along with the experience of WTI's proposed PM. AR, Tab 109, WTI Protest (B-413139.3), at 5942-5963.

On November 1, our Office provided outcome prediction alternative dispute resolution (ADR) to the parties involved in WTI's first protest, and informed them that the protest would be denied. AR, Tab 112, ADR Scheduling Email, at 6252; COS at 19-20. On November 6, before we issued our written decision, WTI submitted notice of its intent to file a protest at the Court of Federal Claims (COFC) and then subsequently withdrew its protest with our Office.<sup>7</sup> AR, Tab 113, COFC Pre-filing Notification, at 6259; Tab 114, Formal Withdrawal Notice, at 6262. On November 15, NASA notified WTI that it intended to conduct an investigation based on information WTI provided to the agency and that NASA would be suspending performance of the contract until the investigation was completed. AR, Tab 115, Letter to WTI, at 6265. As a result WTI did not pursue its protest at the COFC. COS at 20.

NASA then reconvened the SEB to verify the experience of Paragon's PM. COS at 20. The agency contacted the PM's prior employers and also retrieved internal NASA records relating to a prior similar contract where Paragon's PM had previously performed. Id. The SEB took these actions to determine whether any changes needed to be made to the staffing approach subfactor rating that had been assigned to Paragon's proposal. Id. Based on the agency's investigation, the SEB determined that it was necessary to reduce the amount of time previously attributed to Paragon's PM for

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<sup>7</sup> WTI formally withdrew its protest with our Office on November 8, 2017. In the same e-mail, WTI informed our Office that it would be filing a protest with the COFC. AR, Tab 114, Formal Withdrawal, at 6262.

his program management experience and his supervisory experience managing a comparably sized workforce. AR, Tab 118, SEB Verification of Paragon PM, at 6282.

Based on these changes, Paragon's point score under the staffing approach subfactor was changed from 374 points to 270 points, and the adjectival rating was changed from very good to good. AR, Tab 120, Second Final Findings Presentation, at 6420. Additionally, the SEB no longer considered Paragon's proposed PM to be a significant strength for the company. *Id.* at 6441. As relevant here, the investigation conducted by the agency was limited solely to a reevaluation of the experience that had been attributed to Paragon's PM. COS at 20. NASA's investigation did not reevaluate any other offeror's proposal or any other aspect of Paragon's proposal. AR, Tab 120, Second Final Findings Presentation, at 6420-6479.

The SEB presented its revised evaluation to the SSA on January 17, 2018. *Id.* at 6403. On February 26, based on the SEB's revised evaluation ratings, the SSA made a new award decision and selected Canvas' proposal for award. AR, Tab 121, Second Source Selection Statement, at 6502. WTI, Paragon, and Canvas received a second written debriefing outlining the basis of the agency's new award decision on March 1. AR, Tab 126, WTI Second Debriefing, at 6573; Tab 124, Paragon Second Debriefing, at 6537; Tab 123, Canvas Second Debriefing, at 6521. WTI filed its second protest challenging the agency's award to Canvas on March 5. Paragon's protest was filed on March 7.

## DISCUSSION

Both WTI and Paragon raise several challenges to the agency's evaluation of proposals under the RFP's non-price factors. For instance, WTI raises again various allegations it previously alleged with regard to NASA's evaluation of WTI's past performance and the evaluation of WTI's proposed PM. Paragon argues that NASA was obligated to reopen discussions so that it would have an opportunity to address the new concerns identified by the agency during its investigation and reevaluation of Paragon's proposed PM.<sup>8</sup> Additionally both protesters contend that NASA conducted an unequal evaluation with regard to the experience of the PMs that were proposed.<sup>9</sup>

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<sup>8</sup> Paragon's initial protest alleged that NASA unequally assigned strengths to other proposals under the management approach subfactor for the amount of local autonomy and authority those offerors proposed, and that the agency unreasonably evaluated the experience of Paragon's proposed PM. In response, the agency provided a detailed rebuttal in its agency report. Paragon's comments failed to address the agency's responses. Consequently, we consider the protester to have abandoned these arguments and will not consider them further. See Organizational Strategies, Inc., B-406155, Feb. 17, 2012, 2012 CPD ¶ 100 at 4 n.3.

<sup>9</sup> The protesters also raise other collateral arguments. Although we do not address every argument in detail, we have reviewed each issue and find no additional bases to sustain the protest. For example, we find no merit to WTI's allegation that NASA departed from the RFP's evaluation criteria by giving more weight to the significant

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## Evaluation of WTI's Proposal

WTI reasserts multiple allegations related to the agency's evaluation of its proposal that were filed in its first protest, but were later voluntarily withdrawn. For example, WTI again asserts that the neutral rating it received for past performance was unreasonable because it alleges that the contracts it submitted for review were relevant to the work contemplated by the RFP.

The agency asserts that these protest allegations are untimely because they are being raised more than 10 days after WTI's first debriefing on August 3, 2017, which is when WTI received the basis for its evaluation ratings. In response, WTI argues that the instant protest allegations are timely because they were filed within 10 days after WTI received its second debriefing on March 1, 2018.

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 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier, 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). In such cases, with respect to any protest basis which is known or should have been known either before or as a result of the debriefing, and which does not involve an alleged solicitation impropriety, the initial protest shall not be filed before the debriefing date offered to the protester, but shall be filed not later than 10 days after the date on which the debriefing is held. Id. Our timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Dominion Aviation, Inc.--Recon., B-275419.4, Feb. 24, 1998, 98-1 CPD ¶ 62 at 3.

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strength of Canvas' program manager, an element under the lower weighted staffing approach subfactor, than it did to WTI's significant strengths, which were identified in the higher weighted management approach subfactor. Here, the record demonstrates that the SSA did not give more weight to an element in a lower rated subfactor, but rather that the SSA used the strength of Canvas' program manager as a discriminator in the tradeoff analysis, which the SSA had the authority to do. See Tabcon, Inc., B-411554, Aug. 18, 2015, 2015 CPD ¶ 257 at 8 ("An agency, in making its tradeoff analysis, may ultimately focus on a particular discriminator, even if it is not one of the most heavily weighted factors, where it has a reasonable basis to do so."). Although we find no basis to sustain this allegation, we note that because we sustain the protesters' allegations of unequal treatment and recommend reevaluation of Canvas' program manager along with a new best-value tradeoff decision, it is unclear whether the strength of Canvas' program manager will remain a discriminator.

Here, we agree with the agency and conclude that all of WTI's protest allegations related to NASA's evaluation of its proposal are untimely.<sup>10</sup> The record demonstrates that WTI knew the basis for the agency's evaluation of its proposal more than 10 days before WTI filed its March 5, 2018 protest. For example, NASA provided WTI with its first debriefing on August 3, 2017, which was after the contract was initially awarded to Paragon. AR, Tab 108, WTI's First Debriefing, at 5912. That first debriefing provided WTI with its ratings, and the basis for those ratings, under all the RFP's evaluation factors. *Id.* at 5916-5917. Since that August 3, 2018 debriefing, no aspect of WTI's proposal was reevaluated and no changes were made to any of the ratings originally assigned. Moreover, in response to its protest, WTI received the full agency report on September 13, 2017, which contained all documents relevant to NASA's evaluation of WTI.<sup>11</sup> AR, Tab 110, WTI Comments (B-413139.3), at 6237. Based on these facts, WTI's allegations challenging again the agency's evaluation of WTI's proposal are untimely because they are being filed more than 10 calendar days (here, at least six months) after WTI knew of the basis to challenge NASA's evaluation and its first debriefing.

We disagree with WTI's assertions that these protest allegations are timely because they were filed within 10 days after the agency's second debriefing. The second debriefing was offered as a result of the agency's new source selection decision, and as we have previously stated, a new source selection decision or the reevaluation of proposals does not provide a basis for reviving otherwise untimely protest allegations where the basis of the otherwise untimely protest allegations concern aspects of the agency's evaluation that were not subsequently affected by the agency's corrective action. See e.g. Red River Computer Company, Inc.; MIS Sciences Corp., B-414183.8, *et.al.*, Dec. 22, 2017, 2018 CPD ¶ 7 at 6-7 n.10; Synergy Solutions, Inc., B-413974.3, June 15, 2017, 2017 CPD ¶ 332 at 7; Savvee Consulting, Inc., B-408416.3, Mar. 5, 2014, 2014 CPD ¶ 92 at 6; DRS ICAS, LLC, B-401852.4, B-401852.5, Sept. 8, 2010, 2010 CPD ¶ 261 at 21.

Moreover, this is not WTI's first time challenging the agency's evaluation of its proposal as WTI raised substantially similar allegations in its August 14, 2017 protest, which was filed after its first debriefing. That initial protest was voluntarily withdrawn after our Office conducted outcome prediction ADR and before a written decision was issued. Raising again these same allegations now constitutes unwarranted development of the same protest issues and undermines our goal of affording parties the opportunity to

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<sup>10</sup> We do not dismiss WTI's challenges that are related to the agency's new award to Canvas. For example, WTI's protest allegation that the agency performed an unequal evaluation of Canvas' proposal as compared to WTI's is discussed later in this decision.

<sup>11</sup> On September 25, 2017, based on information in the agency report, WTI specifically withdrew its protest allegations regarding "the [a]gency's evaluation of the offerors' past performance." AR, Tab 110, WTI Comments (B-413139.3), at 6237-6238.

present their cases with the least disruption possible to the orderly and expeditious conduct of government procurements. See e.g. Labat-Anderson Inc., B-246071.4, Oct. 9, 1992, 92-2 CPD ¶ 244 at 5. Accordingly, we see no reason to provide the protester here with a second opportunity to re-file protest allegations that it chose to withdraw from our forum after being notified that they would be denied. See e.g. Synergy Solutions, Inc., *supra*. Accordingly, these protest grounds are dismissed as untimely.<sup>12</sup> 4 C.F.R. § 21.2(a)(2).

## Discussions with Paragon

Paragon argues that the agency was obligated to re-open discussions and provide it with an opportunity to address alleged weaknesses identified by the agency during NASA's reevaluation of Paragon's PM. In this regard, the protester contends that because NASA previously expanded the scope of discussions to allow offerors to address all issues, questions, concerns, and weaknesses, including those that were not considered significant, the agency was required to provide Paragon with an opportunity to address NASA's new findings after Paragon's proposal was reevaluated. Paragon asserts that this opportunity should have been provided irrespective of whether the agency characterized a finding as a significant weakness or deficiency. Paragon also argues that regardless of how the new findings by NASA were characterized, the fact that Paragon's rating was revised so significantly upon reevaluation provides evidence that the alleged concerns were treated as weaknesses.

The Federal Acquisition Regulation (FAR) requires agencies to conduct discussions with offerors in the competitive range concerning, "[a]t a minimum . . . deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond." FAR § 15.306(d)(3). When an agency engages in discussions with an offeror, the discussions must be "meaningful," that is, sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision in a manner to materially enhance the offeror's potential for receiving the award. FAR § 15.306(d); Bank of Am., B-287608, B-287608.2, July 26, 2001, 2001 CPD ¶ 137 at 10-11. However, the contracting officer is not required to discuss every area where a proposal could be improved. FAR § 15.306(d)(3); Insignia-Spectrum, LLC, B-406963.2, Sept. 19, 2012, 2012 CPD ¶ 304 at 5.

Here, NASA explains that it made the decision to reevaluate the experience of Paragon's PM because of information the agency received from WTI, after WTI's first protest. AR, Tab 118, SEB Verification of Paragon PM, at 6270. As a part of NASA's reevaluation, the agency verified the PM's employment history by contacting the

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<sup>12</sup> WTI also requested that we review these challenges under our authority to consider untimely protests that raise issues which are significant to the procurement system. We decline to exercise this authority as we disagree with WTI's assessment that issues concerning the agency's evaluation of WTI's proposal are significant to the procurement system. Goel Services, Inc., B-310822.2, May 23, 2008, 2008 CPD ¶ 99 at 3.



individual's prior employers and by reviewing internal records related to a previously performed NASA contract with information relevant to Paragon's PM. Id. at 6270-6271, 6291, 6338.

Paragon's proposal had initially been assigned 374 points, and a very good rating under the staffing approach subfactor. AR, Tab 102, Final Presentation to SSA, at 5750. This rating was assigned, in part, because the proposed PM was identified as a significant strength under that subfactor. Id. at 5771. The SEB initially came to this conclusion based on the individual's approximately 16 years of PM-related work experience; his approximately eight years of experience managing a workforce comparable in size to the proposed contract; a very positive reference; a relevant degree in business management; various relevant certifications; and because he signed a letter of commitment with Paragon. Id.

As a result of NASA's reevaluation, the SEB revised the rating and numerical score previously assigned to Paragon's proposal under the staffing approach subfactor. AR, Tab 118, SEB Verification of Paragon PM, at 6343. The SEB concluded that a revision was necessary based on information it uncovered demonstrating that the SEB had previously credited Paragon's PM with more experience than he deserved. Id. at 6281-6282, 6291, 6341. In this regard, the agency's investigation uncovered discrepancies in the amount of experience that was represented on the face of Paragon's proposal and the amount of experience the SEB could verify from internal agency contract records, along with the SEB's contacts with prior employment references. Id. The SEB's investigation also identified a gap in Paragon's PM's employment record that had not been previously identified. Id. at 6343. Based on this new information, the SEB determined that Paragon should be assigned 270 rather than 374 points for its staffing approach and revised the adjectival rating from very good to good. Id.

Based on our review of the record, we disagree with Paragon's assertion that the new information identified by NASA's reevaluation resulted in the assignment of a concern, issue, weakness, significant weakness, or deficiency. Rather, the contemporaneous record reflects that the revision was due to the loss of a previously assigned significant strength. Here, after the experience of Paragon's PM was reevaluated, the protester still received a good rating, and 270 of the 450 total possible points under the staffing approach subfactor. Id. Moreover, the SEB specifically noted that Paragon's staffing approach rating should be revised to good because the "Paragon TEC proposal had no remaining strengths with respect to its [s]taffing [a]pproach." Id. at 6342. Furthermore, the SEB concluded that the new findings that were identified as a result of NASA's investigation "neither increase[d] nor decrease[d] the likelihood of successful program management for the contract." Id. at 6343.

Although the score assigned to Paragon's proposal was reduced by over 100 points after the SEB's reevaluation, this fact alone does not establish that the SEB considered the new information to be an issue, concern, or weakness. Rather, as demonstrated by the record, Paragon's prior proposal had been assigned 374 points under the staffing

approach factor, in part, because the SEB had initially considered Paragon's PM to be a significant strength. AR, Tab 102, Final Presentation to SSA, at 5771. Moreover, after removal of that significant strength, the SSA concluded that Paragon's reevaluated proposal should be assigned "an adjectival rating of '[g]ood'" under the staffing approach subfactor based on the SEB's finding that there were "no significant strengths, no strengths, no significant weaknesses, and no weaknesses." AR, Tab 121, Second Source Selection Statement, at 6498. Despite Paragon's attempts to turn the removal of a significant strength into the assignment of a weakness, the contemporaneous documents do not lend support to such a conclusion. Accordingly, we decline to find that NASA was required to reopen discussions and deny this ground of protest.<sup>13</sup> See FAR § 15.306(d)(3); Insignia-Spectrum, LLC, supra.

### Unequal Evaluation of Offerors Program Manager

WTI and Paragon argue that NASA evaluated proposals unequally by applying a different and higher standard of review to evaluate information contained in their proposals. In this regard, the protesters argue that the agency accepted representations made by Canvas in its proposal with regard to its PM's experience, while refusing to do the same for the protesters.

In response, NASA concedes that it applied a different level of scrutiny when evaluating the experience of the PMs offered by WTI and Paragon, but argues that it was justified in doing so. Supp. Memorandum of Law (MOL) at 14. For example, the agency readily admits that it "did not accept every offerors' program manager experience representations at face value," and that "Paragon's program manager was not the only key person who was subjected to enhanced scrutiny."<sup>14</sup> Id. at 13, 16 (capitalization

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<sup>13</sup> We recognize that Paragon mainly argues that NASA was obligated to reopen discussions because the agency previously provided an exhaustive list of issues for offerors to address in discussions, and that the discussions were allegedly misleading and unreasonable since Paragon was never provided with an opportunity to address these new findings. See Delfasco, LLC, B-409514.3, Mar. 2, 2015, 2016 CPD ¶ 192 at 7; Multimax, Inc., et al., B-298249.6 et al., Oct. 24, 2006, 2006 CPD ¶ 165 at 13. Moreover, we note that Paragon accurately states that if an agency identifies concerns during a reevaluation of proposals that should have been raised had they been identified before discussions were held, the agency is required to reopen discussions in order to permit the offeror to address those concerns. See Delfasco, LLC, supra; Sentrillion Corp., B-406843.3 et al., Apr. 22, 2013, 2013 CPD ¶ 207 at 6. While the protester correctly restates the findings of our prior decisions, the contemporaneous record here does not establish that the SEB's consideration of the new information uncovered by NASA's investigation resulted in finding an issue, concern, or weakness within Paragon's proposal that necessarily required the agency to conduct discussions with Paragon.

<sup>14</sup> NASA concedes that "WTI's program manager was also scrutinized by the SEB and not accepted at face value." Supp. MOL at 16.

corrected). In contrast, the agency submits that it was “not required to go outside the four corners of the Canvas proposal” and, instead, was able to rely on its face, “the information in the proposal regarding the employment history of Canvas’ [p]rogram [m]anager.” Id. at 3.

It is a fundamental principle of federal procurement law that a contracting agency must treat all offerors equally and evaluate their proposals evenhandedly against the solicitation’s requirements and evaluation criteria. Cubic Applications, Inc., B-411305, B-411305.2, July 9, 2015, 2015 CPD ¶ 218; Rockwell Elec. Commerce Corp., B-286201 et al., Dec. 14, 2000, 2001 CPD ¶ 65 at 5. Further, where an agency treats offerors unequally by, for example, reading some offerors’ proposals in an expansive manner and resolving doubt in favor of the offeror, while reading other offerors’ proposals narrowly and applying a more exacting standard that requires affirmative representations within the four corners of the proposal, we have found such evaluations to involve disparate treatment. Lockheed Martin Information Systems, B-292836 et al., Dec. 18, 2003, 2003 CPD ¶ 230 at 11-12.

As relevant here, the RFP required that an offeror’s PM have at least ten or more years of program management experience and five or more years of supervisory experience managing a workforce comparable to, or larger than, the workforce contemplated under the instant requirement. RFP at 313. The solicitation required offerors use a work history template provided in the RFP to describe various aspects of their PM’s experience and identify the dates the individual was employed for each prior job held. Id. at 248-253. The template also required offerors to identify the number of employees supervised by the PM and provided a narrative section where offerors were to describe the work that was performed. Id. at 250.

Our review of the record confirms that when evaluating the awardee’s proposal, the agency gave Canvas’ PM full credit for experience described on the face of Canvas’ proposal. In contrast, NASA concedes that it applied “enhanced scrutiny” to Paragon’s proposal, and the record demonstrates that the agency only credited Paragon’s PM for experience that could be independently verified by NASA. AR, Tab 118, SEB Verification of Paragon PM, at 6270-6271, 6291, 6338.

For example, one of the work history templates submitted with Canvas’ proposal indicated that its PM was employed from November 2009 through July 2015 by a company identified as Manufacturing Tech Solutions (MTS). AR, Tab 80, Canvas FPR, at 4102. The template indicated that Canvas’ PM had managed 185 individuals while with MTS. Id. The narrative portion of the template also stated that Canvas’s PM “led the capture, proposal development, and [p]hase-[i]n for two large [NASA] contracts,” during her employment with MTS. Id. The two contracts were identified as an “ISS [l]ogistics [c]ontract” and a NASA Marshall Integrated Programmatic Support Services

(MIPSS) contract.<sup>15</sup> Id. at 4102. The narrative description went on to note that the PM “managed over 185 people” under the MIPSS contract but contained no information to establish when the MIPSS contract was awarded, or when the PM started managing those 185 individuals. Id. The narrative description also failed to provide any details with regard to how many individuals were managed under the ISS contract, when that contract was awarded, or when the PM’s performance under that contract began. Id.

Although the MIPSS contract was issued in support of NASA, there is nothing in the record to demonstrate that the agency made any attempt to verify the PM’s supervisory management experience against the agency’s own internal contract records. Additionally, there is nothing in the record to demonstrate that NASA performed any validation of what the ISS logistics contract entailed, how many individuals performed under that contract, or when that contract was awarded. Rather, the agency simply credited the PM for managing 185 employees during her entire tenure with MTS. AR, Tab 120, Second Final Findings Presentation, at 6444.

On the other hand, one of the work history templates submitted with Paragon’s proposal indicated that its PM was employed from May 2005 through December 2009 at a company called Digital Fusion Solutions Incorporated (DFS). AR, Tab 83, Paragon FPR, at 4511-4512. The template noted that Paragon’s PM had managed 106 individuals while with that company. Id. The DFS narrative provided a general description of the PM’s duties noting that he had been promoted to the role of the NASA ABSS contract program manager under a predecessor ABSS contract. Id. This narrative description did not provide an exact breakout of the number of employees that were managed under the ABSS contract, or specific timeframes for that management experience. Id.

After WTI filed and withdrew its first protest with our Office, NASA agreed to conduct a reevaluation of Paragon’s proposal and WTI agreed to refrain from filing a protest at the COFC. COS at 20. During the voluntary investigation conducted by the agency, the SEB independently conducted an employment history verification of Paragon’s PM. AR, Tab 118, SEB Verification of Paragon PM, at 6270-6342. As a part of this investigation, the SEB validated the PM’s work experience while he was a DFS employee. Id. Because the DFS narrative contained references to experience under a prior NASA contract, the SEB conducted a review of internal records to “ascertain how many years [Paragon’s PM] managed a workforce size” that was comparable to the workforce required under the instant solicitation. Id. at 6291. In performing this investigation, the SEB used information from its internal records to create a chart identifying the exact number of employees managed by Paragon’s PM while at DFS, with that information broken out by the dates during which those employees were being managed. Id. The SEB then made a downward revision to the prior rating it assigned to Paragon after

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<sup>15</sup> It is unclear from the record what the acronym, ISS, stands for in the referenced contract.

crediting the PM for only that supervisory management experience which could be corroborated by NASA's own internal contract records. Id. at 6341-6343.

Here, the record demonstrates that while NASA accepted the experience of Canvas' PM at face value, it established a different and higher standard of review to evaluate Paragon's PM's experience. Although both proposals represented that their respective PM's had work experience managing employees under prior NASA contracts, the SEB chose to independently investigate the experience of Paragon's PM, but not the experience of Canvas' PM. Thus, as the agency concedes, it read Canvas' proposal in an expansive manner, while applying heightened scrutiny and a more exacting standard to Paragon's proposal. This amounted to an unequal evaluation.<sup>16</sup> See Lockheed Martin Information Systems, supra.

#### Justification for Unequal Treatment

NASA insists that it was justified in performing an unequal evaluation because WTI provided it with credible outside information that called into question the accuracy of the information in Paragon's proposal.<sup>17</sup> This credible information was provided to NASA in the form of the draft complaint, which WTI intended to file at the COFC. COS at 20. More specifically, WTI's draft complaint contained a deposition of Paragon's PM that was taken in connection with an unrelated litigation. Id. In that deposition, Paragon's PM provided information related to his work experience with a company identified as AQuate Corporation, and stated that he first began working for AQuate in August, 2012. AR, Tab 118, SEB Verification of Paragon PM, at 6277. The information provided by Paragon's PM in that deposition was in conflict with information provided in Paragon's

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<sup>16</sup> For the reasons discussed in the decision, we agree that NASA unequally evaluated proposals under the staffing approach subfactor and sustain the protest on this basis. Accordingly, we need not address the protesters' other allegations challenging the agency's evaluation of Canvas' PM because as discussed more fully below, this decision includes a recommendation that the agency reevaluate the experience of the PMs proposed by offerors remaining in the competitive range.

<sup>17</sup> The agency also argued that unequal treatment was justified because the record shows that NASA also "took exception to WTI's proposed [p]rogam [m]anager." Supp. MOL at 13. We agree that NASA imposed a different level of scrutiny on both WTI's and Paragon's proposals but fail to see how this provides a justification for why it should be allowed to treat Canvas' proposal differently. The agency's application of a different standard to protesters' proposals, but not to awardee's proposal, does not provide reasonable justification for an unequal evaluation. See Artic Slope Mission Servs., LLC, B-410992.5, B-410992.6, Jan. 8, 2016, 2016 CPD ¶ 39 at 7-12 (sustaining a protest asserting unequal treatment where the agency's justification for such unequal treatment was inadequate).

proposal, which represented that the PM began working at AQuate in August, 2011.<sup>18</sup> AR, Tab 83, Paragon FPR, at 4510.

The agency contends that once WTI brought this outside information to the agency's attention, NASA needed to scrutinize Paragon's PM based on its "obligation to preserve the integrity of the procurement process," and that this heightened scrutiny corrected a material flaw in the procurement while also maintaining a level playing field for the benefit of all offerors. Suppl. MOL at 14-15.

In the instant protests, both protesters now raise allegations challenging the amount of experience that NASA attributed to Canvas' PM. For example, Paragon asserts that it was improper for the agency to credit Canvas' PM with over five years of the supervisory management experience required by the RFP for her time while she was an MTS employee. In this regard, the narrative portion of the relevant work history template noted that "the MIPSS PM, [] managed over 185 people," but failed to provide dates to establish when the MIPSS task orders were issued to MTS. AR, Tab 80, Canvas FPR, at 4102. The narrative statement also notes that the PM was employed at MTS from November 2009 through July 2015. Id. Paragon argues that it is improper to credit the PM with a full five years and eight months of the supervisory management experience required by the RFP because MTS's publically available website states that performance of the first MTS MIPSS task order did not begin until October, 2013, which was well over two years after the PM began working for MTS.<sup>19</sup> Paragon's Comments at 13-14.

The agency attempts to characterize this information provided by Paragon as the protester's "interpretation" of Canvas' PM's work history.<sup>20</sup> Supp. MOL at 16. NASA

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<sup>18</sup> The agency characterizes the discrepancy in the PM's work history as a "material misstatement," while Paragon characterizes it as "a simple clerical error in the transcription." Supp. MOL at 14; Paragon Comments at 34.

<sup>19</sup> A screen shot from the MTS website shows that MTS was selected as a MIPSS awardee on April 1, 2013. Paragon Comments at 14. MTS was issued two MIPSS task orders on August 14, 2013. Id. The MTS website screenshot indicates that performance under those two task orders did not begin until October 1, 2013. Id.

<sup>20</sup> NASA also argues that it was reasonable to attribute over five years of supervisory management experience to Canvas' PM while she was employed at MTS because the narrative portion of the relevant template included a reference to a large ISS logistics contract. Paragon's protest included outside information calling into question whether MTS ever received award of a contract identified as an ISS logistics contract. Rather, based on publicly available information on MTS's website it appears that MTS was a subcontractor to Boeing under a Boeing Engineering and Technical Services Contract, which appears to have been awarded to support the International Space Station. Paragon's Comments at 17. Because the narrative portion of the template contained no other information related to the ISS contract except for its existence, it is unclear how

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also argues that our prior decisions provide agencies with the discretion to reasonably rely upon information provided by an offeror in its proposal when performing their evaluations. See Able Bus. Techs., Inc., B-299383, Apr. 19, 2007, 2007 CPD ¶ 75 at 5. Additionally, NASA asserts that our decisions do not place an obligation on agencies to consider outside information when evaluating the experience of an offeror. See Aerostar Perma-Fix TRU Services, LLC, B-411733, B-411733.4, Oct. 8, 2015, 2015 CPD ¶ 338 at 10 n.7.

As a threshold matter, we note that the outside information provided by Paragon does not represent the protester's interpretations of the experience of Canvas' PM, but rather, consists of facts pulled from various third party websites, like the publically available website of a former employer of Canvas' PM. We see no meaningful distinction between the information provided here and that which was previously presented by WTI. The facts presented here by the protesters identify discrepancies with regard to the experience that NASA attributed to Canvas' PM. Though NASA is correct in that it is not obligated to consider outside information when evaluating the experience of an offeror, as previously discussed, it is a fundamental principle of federal procurement law that a contracting agency must treat all offerors equally and evaluate their proposals evenhandedly against the solicitation's requirements and evaluation criteria. Cubic Applications, Inc., supra; Rockwell Elec. Commerce Corp., supra.

We also agree that NASA may have had no initial obligation to consider outside information before reevaluating Paragon's proposal, but it voluntarily chose to consider such information. In this regard, NASA's decision to consider outside information to justify scrutinizing one proposal, but its refusal to use credible outside information to justify scrutinizing another offeror's proposal amounts to an unequal evaluation. See Lockheed Martin Information Systems, supra. We sustain the protest on this basis.

## Prejudice

Competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest. Innovative Test Asset Solutions, LLC, supra, at 11; DRS C3 Sys., LLC, B-310825, B-310825.2, Feb. 26, 2008, 2008 CPD ¶ 103 at 28; see Statistica, Inc. v. Christopher, 102 F.3d 1577 (Fed. Cir. 1996).

Here, we find prejudice in the agency's unequal evaluation of the experience proposed by different offerors. The agency admits that it conducted an unequal evaluation. Supp. MOL at 3, 13, 16. Based on that unequal evaluation, the agency accepted all the information related to the experience of Canvas' PM at face value, while obtaining

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NASA could use the ISS contract to attribute relevant supervisory management experience to Canvas' PM.

outside information to scrutinize Paragon's PM. This led NASA to identify Canvas' PM as a significant strength, which played a role in justifying the SEB's decision to assign 369 points and a very good rating to Canvas' proposal under the RFP's staffing approach subfactor. AR, Tab 120, Second Final Findings Presentation, at 6444. Moreover, the SSA specifically cited to the significant strength for Canvas' proposed PM when selecting Canvas' proposal for award. AR, Tab 121, Second Source Selection Statement, at 6502.

Had the agency applied the same level of scrutiny in its evaluation of Canvas' PM, it is unclear whether the individual would have been identified as providing a significant strength, or if its proposal would have received the same rating and score under the staffing approach subfactor. Accordingly, we cannot conclude that the SSA would have reached the same award decision had NASA not conducted an unequal evaluation. A reasonable possibility of prejudice is a sufficient basis for sustaining a protest. See Supreme Foodservice GmbH, B-405400.3 et al., Oct. 11, 2012, 2012 CPD ¶ 292 at 14; J.R. Conkey & Assocs., Inc. d/b/a Solar Power Integrators, B-406024.4, Aug. 22, 2012, 2012 CPD ¶ 241 at 11.

## RECOMMENDATION

We recommend that NASA conduct a reevaluation of the experience of the program managers proposed by offerors remaining in the competitive range, and that the reevaluation be conducted in an equal manner. Additionally, based on the results of the reevaluation we recommend that the agency prepare a new source selection decision to account for any revisions that may be made to the ratings and scores assigned to offerors. Finally, we recommend that the agency reimburse the protesters their costs associated with filing and pursuing the protests, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1). The protesters' certified claim for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after the receipt of this decision. 4 C.F.R. § 21.8(f).

The protest is dismissed in part, denied in part, and sustained in part.

Thomas H. Armstrong  
General Counsel