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# Decision

**Matter of:** SURVICE Engineering Company, LLC

**File:** B-414519

**Date:** July 5, 2017

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## DIGEST

1. Protest challenging agency's evaluation of awardee's professional compensation plan is sustained where the record does not demonstrate that the agency conducted an evaluation in accordance with the requirements of Federal Acquisition Regulation provision 52.222-46.
  2. Protest that agency miscalculated proposals is sustained where the agency evaluated proposals unequally and applied unstated evaluation criteria.
  3. Protest alleging that the agency's evaluation is flawed because the agency did not use certain past performance information to assess the protester's proposal under the solicitation's technical capability and risk evaluation factor is denied, where the agency was not required to look to past performance evaluations to assess the offeror's technical proposal.
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## DECISION

The SURVICE Engineering Company, LLC (SEC), of Belcamp, Maryland, protests the award of a contract to Engineering Research and Consulting, Inc. (ERC), of Huntsville, Alabama, under request for proposals (RFP) No. FA2486-16-R-0065, for engineering, program management, and administrative services in support of the Air Force SEEK

EAGLE Office (AFSEO), Eglin Air Force Base, Florida.<sup>1</sup> Contracting Officer's Statement of Fact (COSF) at 2, 3; RFP. The protester alleges that the agency failed to evaluate offerors' proposed compensation plans in accordance with Federal Acquisition Regulation (FAR) provision 52.222-46 and the solicitation. SEC also contends that the agency applied the solicitation's evaluation factors unequally and applied unstated evaluation criteria. Finally SEC alleges that agency was required to credit SEC in the technical evaluation for outside past performance information that was not incorporated into SECs technical proposal.

We sustain the protest in part and deny it in part.

## BACKGROUND

The Air Force issued the SEEK EAGLE Modeling Analysis, and Tools Support (SEMATS 2) RFP on December 2, 2015, in accordance with the procedures under Federal Acquisition Regulation (FAR) part 15, and subsequently amended the solicitation five times.<sup>2</sup> MOL at 4; COSF at 7-10.

The agency anticipated award of a single indefinite-delivery, indefinite-quantity, fixed-price<sup>3</sup> contract to the offeror submitting the proposal representing the best value to the agency, taking into account three evaluation factors in descending order of importance: technical capability and risk, past performance, and cost/price. RFP at 174-175.<sup>4</sup> The technical/risk factor comprised four equally-important subfactors: (1) aircraft-stores compatibility engineering analysis and support; (2) technical workforce management; (3) organizational conflict of interest; and (4) program management. Id. The agency

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<sup>1</sup> The SEEK EAGLE is the Air Force standard process for certification of aircraft stores and AFSEO is the manager of all certification activities as part of the Air Force airworthiness certification process and the assurance of operational safety, suitability and effectiveness. Memorandum of Law (MOL) at 4. An aircraft store is "[a]ny device intended for internal or external carriage, mounted on aircraft suspension and release equipment, which may or may not intend to be separated in flight from the aircraft. Stores include missiles, rockets, bombs, nuclear weapons, mines, fuel and spray tanks, torpedoes, detachable fuel and spray tanks, dispensers, pods, targets, chaff and flares, decoys, and suspension equipment." MOL n.2, citing Air Force Instruction (AFI) 63-104, The Seek Eagle Program, Jan. 21, 2005, at 19-20.

<sup>2</sup> There is some variance in the record as to whether the solicitation was issued on November 30, December 1, or December 2. This discrepancy is not material to this decision.

<sup>3</sup> Contract line item numbers (CLINs) in the RFP are either fixed-priced or fixed-price level-of-effort. RFP at 2-5.

<sup>4</sup> The agency report was submitted as individually bates-stamped tabs. Citations to the record are to the bates-stamped page of each tab.

intended to assign strengths and weaknesses to offerors' technical proposals. As relevant to this protest, the solicitation defined a strength as:

An element of the proposal that has merit or exceeds specified performance or capability requirements in a way that will be advantageous to the Government during contract performance. This element may increase the likelihood of successful contractor performance by having, for instance, a positive impact on cost, customer service, schedule, accounting procedure, or improved efficiency.

RFP at 176. Also relevant to this protest, the RFP provided the following adjectival ratings:

<b>Rating</b>	<b>Description</b>
<b>Outstanding</b>	Proposal meets requirements and indicates an exceptional approach and understanding of the requirements. Strengths far outweigh any weaknesses. Risk of unsuccessful performance is very low.
<b>Good</b>	Proposal meets requirements and indicates a thorough approach and understanding of the requirements. Proposal contains strengths which outweigh any weaknesses. Risk of unsuccessful performance is low.
<b>Acceptable</b>	Proposal meets requirements and indicates an adequate approach and understanding of the requirements. Strengths and weaknesses are offsetting or will have little or no impact on contract performance. Risk of unsuccessful performance is no worse than moderate.

RFP at 175-176.

The solicitation also advised offerors that FAR provision 52.222-46, Evaluation of Compensation for Professional Employees, was incorporated into the solicitation. Id. at 126. In this regard, as part of the technical workforce management subfactor, offerors were to submit their "approach to [their] professional compensation plan in accordance with FAR 52.222-46." RFP at 134. Offerors were also required to "provide a rate for each of the labor category/skill level combinations" listed in section L of the RFP and "submit a table showing proposed firm-fixed price rates, by labor hour, labor category, and by year." RFP at 143. The RFP also advised offerors as follows:

Offeror's proposal shall include a professional compensation plan that complies with the provisions of FAR 52.222-46. The plan shall address [sic], at a minimum, commitment to professional employee salaries and fringe benefit that are commensurate with the work to be performed, market conditions and geographical factors, rates or salary ranges that account for the differences in progressive skill requirements or in job complexity and difficulty. Supporting information used to develop the total compensation structure shall be included in the proposal.

RFP at 147; see also RFP, Amend. 0005, at 2. The solicitation also stated that offeror’s “[e]valuated [p]rice for labor will be based on the rates provided by the offeror and the hours provided by the Government” in the solicitation. RFP at 186.

The Air Force received three proposals by the deadline of November 10, 2016, each of which “contained at least one deficiency[,] making [it] unawardable.” COSF at 9; MOL at 9. The agency established a competitive range of the three offerors and entered into discussions. MOL at 9. The agency conducted oral discussions on November 1-2, 2016. AR, Tab 34, SEC Discussion Minutes; Tab 37, ERC Discussion Minutes. On March 1, 2017, the agency closed discussions and requested final proposal revisions (FPR). AR, Tab 60, ERC FPR Notice, Mar 1, 2017, at 1; Tab 61, SEC FPR Notice, Mar. 1, 2017, at 1.

In conducting its evaluation of FPRs, the agency awarded two strengths to SEC’s proposal: one under the aircraft store engineering analysis and support subfactor, and another under the technical workforce management subfactor. AR, Tab 67, Final Evaluation Briefing, at 53, 56. ERC’s proposal received a total of four strengths: one under the aircraft store engineering analysis and support subfactor, and three under the technical workforce management subfactor. Id. at 42, 45.

The agency evaluated proposals as follows:

	SEC	ERC	Offeror 3
<b>Technical/Risk</b>			
<b><i>Aircraft Store Engineering Analysis &amp; Support</i></b>	Acceptable	Acceptable	Acceptable
<b><i>Technical Workforce Management</i></b>	Acceptable	Acceptable	Acceptable
<b><i>Org. Conflict of Interest</i></b>	Acceptable	Acceptable	Acceptable
<b><i>Program Management</i></b>	Acceptable	Acceptable	Acceptable
<b>Past Performance</b>	Substantial Confidence	Substantial Confidence	Substantial Confidence
<b>Cost/Price</b>	\$90,081,265	\$82,420,258	\$(DELETED)
<b>Reasonableness</b>	Reasonable	Reasonable	Reasonable
<b>Unbalanced Pricing</b>	Balanced	Balanced	Balanced

Id. at 39 (prices rounded). The agency conducted a best-value evaluation and made award to ERC. AR, Tab 68, Source Selection Decision Document (SSDD), Mar. 9, 2017, at 15. SEC requested a debriefing, which was held on March 23, 2017, and this protest followed.

## DISCUSSION

SEC contends that the agency failed to perform the analysis of ERC’s professional compensation plan required by FAR provision 52.222-46 and the solicitation. The

protester also asserts that the technical evaluation was unequal and that the agency applied unstated evaluation criteria. In addition, SEC argues that the agency should have incorporated certain past performance information into SEC's technical evaluation. For the reasons below, we sustain the protest.

#### Evaluation of ERC's Professional Employee Compensation Plan

SEC argues that the agency's price evaluation was flawed because the Air Force failed to evaluate ERC's proposed professional employee compensation plan in accordance with FAR provision 52.222-46, which was incorporated into the solicitation and formed part of the section M evaluation. SEC Comments at 14; RFP at 178. In this regard, SEC contends that the agency did not evaluate ERC's complete plan or compare the proposed salaries to incumbent salaries, and that this failure allowed the agency to find ERC's proposal to be acceptable under this analysis despite low salary rates. Id.

The purpose of a review of compensation for professional employees is to evaluate each offeror's ability to provide uninterrupted, high-quality work, considering the realism of the proposed professional compensation and its impact upon recruiting and retention. FAR § 52.222-46(a); MicroTechnologies, LLC, B-413091, B-413091.2, Aug. 11, 2016, 2016 CPD ¶ 219 at 6. In the context of a fixed-price labor hour contract, our Office has explained that this FAR provision anticipates an evaluation of whether an awardee understands the contract requirements and has proposed a compensation plan appropriate for those requirements, in effect, a price realism evaluation regarding an offeror's proposed compensation. L-3 Nat'l Sec. Sols., Inc., B-411045, B-411045.2, Apr. 30, 2016, 2016 CPD ¶ 233 at 7-8. Our review of a price realism analysis is limited to determining whether it was reasonable and consistent with the terms of the solicitation. Smiths Detection, Inc.; Am. Sci. & Eng'g, Inc., B-402168.4 et al., Feb. 9, 2011, 2011 CPD ¶ 39 at 17. Where a solicitation requires an agency to conduct a price realism analysis, and the evaluation record does not demonstrate whether the agency reasonably conducted such an analysis, we will sustain the protest. L-3 Nat'l Sec. Sols., Inc., supra, at 9; Logistics 2020, Inc., B-408543, B-408543.3, Nov. 6, 2013, 2013 CPD ¶ 258 at 7-8.

As relevant here, the RFP required proposals to include a professional employee compensation plan, as prescribed in FAR provision 52.222-46. RFP at 126. This FAR provision calls for an evaluation of each offeror's compensation plan, defined as "salaries and fringe benefits," to ensure that the plan reflects a sound management approach and understanding of the contract requirements. FAR § 52.222-46(a). Offerors are advised that "[t]he professional compensation proposed will be considered in terms of its impact upon recruiting and retention, its realism, and its consistency with a total plan for compensation." Id. Additionally, proposals envisioning professional compensation levels lower than those of predecessor contractors for the same work were to be evaluated on the basis of maintaining program continuity, uninterrupted high-quality work, and availability of required, competent professional service personnel. FAR § 52.222-46(b). The provision cautions offerors that "lowered compensation for

essentially the same professional work may indicate lack of sound management judgment and lack of understanding of the requirement.” Id.

ERC submitted a professional compensation plan showing salary ranges by labor category and fringe benefits. AR, Tab 12, ERC Proposal at 64-72. The agency noted ERC’s stated “intent to pay incumbent SEMATS 1 employees to whom we make offers the same salaries they earn at the end of SEMATS 1 on Day 1 of SEMATS 2,” and ERC’s “intent to offer a benefits package that is substantially equivalent in value to the benefits package provided to SEMATS 1 employees.” AR, Tab 23, ERC Initial Technical Worksheet, at 24; Tab 12, ERC Proposal, at 9.

The agency found ERC’s fringe benefits to be “standard” for the “market and region.” AR, Tab 23, ERC Initial Technical Worksheet, at 24. However, ERC’s initial proposed compensation was so far below “Government estimates” that the agency concluded it represented a “material failure in the Offeror’s proposal.” Id. During discussions, the agency advised ERC that its below-market compensation represented a “deficiency” in its proposal. AR, Tab 43, ERC Evaluation Notice with Response, at 9. In response, ERC defended its rates, but advised that it was raising its journeyman salaries to a minimum of the [DELETED] percentile, and that it was raising other salaries to a minimum of the [DELETED] percentile. Id. at 10. The agency concluded that the positions with minimum salaries in the [DELETED] percentile were “within the incumbent and Government salary range estimates for these positions.” Id. at 11. The agency noted ERC’s commitment to “materially preserve the incumbent salaries and benefits of the SEMATS 2 workforce” and concluded that ERC’s revised salary ranges were satisfactory. Id. at 10.

Under FAR provision 52.222-46(b), offerors are advised that, in recompetitions, “proposals envisioning compensation levels lower than those of predecessor contractors for the same work” require additional evaluation. Thus, in order for an agency to determine whether to perform this additional evaluation in a recompetition, it must first conclude whether a proposal “envisio[n]s compensation levels lower than those of predecessor contractor” by comparing the incumbent rates and the proposed rates. FAR § 52.222-46(b). Here, the record does not reflect that the agency compared ERC’s labor rates to those paid to incumbent personnel.<sup>5</sup> Although the record contains a list of the agency’s estimated labor rates by labor category, there is nothing in the record documenting how these rates were compared to ERC’s rates. AR, Tab 15, Estimated Direct Labor Rates; COSF at 45 (“The Government evaluation team determined the risk of each proposed Professional Compensation Plan by comparing

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<sup>5</sup> The Air Force asserts that it “compar[ed] the proposed salary (hourly) rates to that of the incumbent workforce.” COSF at 54-55. There is nothing in the record provided that documents such analysis. Furthermore, this claim is followed by a general discussion of the agency’s price reasonableness analysis. Id. at 55. The agency’s contention remains unsupported by the record.

the labor rates proposed to that of the Government established rate.”)<sup>6</sup> The evaluation notice discussions show that the agency concluded that some of ERC’s initial proposed rates were so low as to rate a deficiency. However; the record is silent as to whether, in the end, any of ERC’s rates were lower than incumbent rates but nevertheless acceptable to the Air Force.

In sum, the record does not demonstrate that the agency considered ERC’s proposed compensation plan under FAR provision 52.222-46(b). Specifically, the Air Force did not reasonably compare ERC’s salaries to incumbent salaries, a necessary step to determine whether the proposed salaries are lower than incumbent salaries. Id. Accordingly, we find that the agency failed to reasonably evaluate whether ERC offered “lowered compensation for essentially the same professional work,” as envisioned by FAR provision 52.222-46. We therefore sustain this aspect of SEC’s protest.<sup>7</sup> L-3 Nat’l Sec. Sols., Inc., supra, at 9; see also Wackenhut Int’l, Inc., B-286193, Dec. 11, 2000, 2001 CPD ¶ 8 at 7 (sustaining protest where RFP language contemplated reviewing compensation plans in comparison to current wages and the agency failed to perform such a review).

#### Unequal Treatment

SEC contends that the agency’s evaluation of technical proposals was unequal and unreasonable. In this regard, the protester challenges some of the strengths awarded

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<sup>6</sup> The Air Force defends its use of government estimated direct labor rates (which were based on multiple external sources, and are apparently lower than the incumbent rates) as the basis of comparison because “the incumbent employees’ average years of experience far exceeded the minimum established in the PWS [performance work statement],” and the higher incumbent rates were not required for technical acceptability. COSF at 51. However, the agency’s use of estimated rates, rather than actual rates, will not allow it to assess whether incumbent employees will be offered lower compensation under a new contract. See FAR § 52.222-46(b). Accordingly, the agency’s rate comparison may not inform the agency of the risk that incumbent employees might attrite after being offered a salary reduction.

<sup>7</sup> SEC also claims that the agency looked only at the salaries proposed by ERC, and did not compare ERC’s proposed fringe benefits to those currently received by incumbent personnel. SEC Comments at 20. This allegation is supported by the record. Although the Air Force found ERC’s fringe benefits to be “standard” for the “market and region.” FAR provision 52.222-46 instructs agencies to compare total proposed compensation levels, i.e., “salaries and fringe benefits,” to predecessor contracts in recompletions. AR, Tab 23, ERC Initial Technical Worksheet, at 24. To the extent that the agency first determined that the fringe benefits proposed offer the same value as incumbent fringe benefits, it would be reasonable for the agency to then limit its comparison to salaries. Here, however, where there is no record of a comparison of proposed benefits to actual fringe benefits, we cannot find reasonable the agency’s compensation evaluation under FAR provision 52.222-46.

to ERC, alleging that those strengths were unequally assigned. Protest at 6 (“The Agency unfairly held [SEC] to a higher standard than the other offerors and effectively assigned [SEC]’s strength to all other offerors simply based on the speculation that, if awarded the contract, they may eventually develop the same strength.”). For the reasons discussed below, we conclude that the agency’s award of strengths to ERC’s proposal was unreasonable.

The evaluation of technical proposals is a matter within the discretion of the contracting agency, since the agency is responsible for defining its needs and the best method for accommodating them. SRA Int’l, Inc., B-408624, B-408624.2, Nov. 25, 2013, 2013 CPD ¶ 275 at 4. In reviewing an agency’s evaluation, we will not reevaluate technical proposals, but instead will examine the agency’s evaluation to ensure that it was reasonable and consistent with the solicitation’s stated evaluation criteria and with procurement statutes and regulations. Id.

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 at 10. Further, where an agency treats offerors unequally by, for example, reading some offerors’ proposals in an expansive manner and resolving doubt in favor of one offeror, while reading other offerors’ proposals narrowly and applying a more exacting standard to those proposals, we have found such evaluations to involve disparate treatment. Arctic Slope Mission Servs., LLC, B-410992.5, B-410992.6, Jan. 8, 2016, 2016 CPD ¶ 39 at 7-9; Lockheed Martin Info. Sys., B-292836 et al., Dec. 18, 2003, 2003 CPD ¶ 230 at 11-12.

#### Incumbent Workforce Retention

The agency awarded ERC’s proposal a strength under the technical workforce management subfactor for planning to credit “[DELETED] in the Offeror’s proposed compensation plan.” AR, Tab 67, Final Evaluation Briefing, at 47. In addition, the Air Force concluded that this aspect of ERC’s proposal:

[D]emonstrates the Offeror’s understanding of the importance of retaining senior and advanced level personnel with niche skills essential to AFSEO mission success. This additional incentive increases the likelihood that high-performing, highly-skilled senior incumbent staff can be retained. This is advantageous to the Government in that it enhances the Offeror’s ability to provide an experienced, highly qualified workforce to deliver uninterrupted high-quality work.

AR, Tab 66, Proposal Analysis Report, at 17. In part, the technical workforce management subfactor requires offerors to “demonstrate their ability to assemble and manage a qualified and capable workforce able to successfully execute the requirements in the SEMATS 2 PWS [performance work statement].” RFP, Amend. 0005, at 61.



SEC alleges that the agency did not evaluate offerors equally because it was not similarly awarded a strength for proposing and “already employing the same ‘senior and advanced level personnel with niche skills essential to AFSEO mission success’ who are ‘high-performing, highly-skilled senior incumbent staff’ and who are an ‘experienced, highly qualified workforce to deliver uninterrupted high-quality work’” from the first day of the new contract. SEC Comments at 10. The Air Force contends that “[c]ontrary to [SEC]’s allegation, all of the offerors were held to the same standard. The Technical Evaluation Team noted strengths for each of the offerors for various reasons throughout the subfactors.” MOL at 19.

The record does not support the Air Force’s position. In this regard, ERC was awarded a strength for proposing to retain incumbent personnel, while SEC was not similarly credited for also offering those personnel. Furthermore, the underpinning of ERC’s strength was not the ability to quickly and smoothly bring its new employees onto the contract but rather ERC’s ability to retain SEC’s “high-performing, highly-skilled senior incumbent staff.” AR, Tab 66, Proposal Analysis Report, at 17. Although SEC received a strength for proposing certain staff with specific software expertise, SEC did not receive a strength for retaining its own employees by respecting seniority or for proposing the same staff.<sup>8</sup>

The Air Force argues that SEC’s proposed workforce was not similarly valued because the agency “has clearly demonstrated its expectation that a successive contractor would attempt to retain the workforce.” COSF at 17. Yet the record provides no explanation as to why ERC was credited for proposing to retain SEC’s workforce, when SEC was not credited for actually proposing its own workforce, and the agency points to no facet of the evaluation criteria that would support this disparity. Where the parties propose essentially the same workforce, and where the agency assessed strengths for the awardee’s efforts to retain the workforce and has not shown why it did not assign similar strengths to the protester’s proposal, we conclude that the agency applied the evaluation criteria unequally and therefore that the evaluation was unreasonable. Exelis Sys. Corp., B-407111 et al., Nov. 13, 2012, 2012 CPD ¶ 340 at 20-21; see also TriCenturion, Inc.; SafeGuard Servs., LLC, B-406032 et al., Jan. 25, 2012, 2012 CPD

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<sup>8</sup> Similar to the application of unstated evaluation criteria to SEC’s proposal discussed below, the Air Force later devalued ERC’s strength, finding that “this incentive is only one of numerous components that prospective employees consider when making a job decision. As such, this incentive has the potential to improve employee retention but does not ensure it.” AR, Tab 66, Proposal Analysis Report, at 17. In certain instances, we have found that an error in an agency’s evaluation was not prejudicial to the protester if the error was applied equally to all proposals. See AEC-ABLE Eng’g Co. Inc., B-257798.2, Jan. 24, 1995, 95-1 CPD ¶ 37 at 5 (denying protest where evaluation error did not result in competitive prejudice). Here, however, the agency did not require all strengths to “ensure” their likely results, and thus the agency’s unstated evaluation criteria was applied unequally. On this record, we cannot find that the application of the unstated evaluation criteria was non-prejudicial.

¶ 52 at 17. In this regard, the Air Force's unequal evaluations benefitted ERC twice: first, when the agency credited ERC (but not SEC) with an aspect of its proposal that would help it retain SEC's employees, and second, when the agency diminished the strength awarded to SEC for proposing technically-skilled personnel because ERC might be able to hire SEC's employees. Accordingly, we sustain this protest ground because we find that the agency treated the offerors unequally. Exelis Sys. Corp., supra.

### Contract Transition

The agency awarded ERC's proposal a strength under the technical workforce management subfactor for its proposed transition to the follow-on contract. AR, Tab 67, Final Evaluation Briefing, at 49. In relevant part, this subfactor required offerors to demonstrate "their ability to seamlessly transition resources and personnel onto this contract and to ensure full continuity of mission support . . ." RFP, Amend. 0005 at 61. The agency considered that ERC's "planned approach minimizes the potential for any disruption of work and increases the likelihood that the Offeror will be able to take full responsibility on the first day of TO [task order] 0002 with minimal or no disruptions." AR, Tab 67, Final Evaluation Briefing, at 49. SEC contends that its proposal should have been similarly credited for minimizing disruptions and taking responsibility from the first day of the new contract. SEC Comments at 8.

There is no general requirement that incoming and incumbent offerors receive the same evaluation regarding the transition from one contract to another. Especially in instances such as this one, where both types of offerors intend to retain the incumbent employees, the nature of the transition is necessarily different for incumbent and non-incumbent offerors. However, in such cases, when the agency recognizes the ability of a non-incumbent offeror to perform on the first day of the contract by retaining incumbent employees, the agency will often recognize a strength in the incumbent's proposal, for using the same methodology to arrive at the same result. Accordingly, where the agency's goal is to have the incoming contractor retain SEC's staff "to the maximum extent possible," in light of the strength awarded to ERC described above, the absence of any strength to SEC for also proposing its highly-valued workforce prepared to perform on day 1 indicates that offerors were not evaluated equally. AR, Tab 67, Final Evaluation Briefing, at 54; Exelis Sys. Corp., supra. Accordingly, we sustain this protest ground.

### Unstated Evaluation Criteria

SEC also alleges that the agency applied unstated evaluation criteria in evaluating SEC's proposal and as a result, failed to follow the evaluation criteria provided in the solicitation. In this regard, the protester claims that, after awarding SEC a strength, the agency applied restrictive and unstated criteria to devalue the strength, such that it was not appropriately credited for awarded strengths. SEC Comments at 2-6. Given the evidence of unequal treatment discussed above, the agency's decision to, in essence, devalue the strengths assessed to SEC do not withstand scrutiny.

In considering a challenge to a technical evaluation, our Office recognizes the discretion afforded an agency in conducting a technical evaluation, so we will not reevaluate technical proposals; rather, we will review a challenge to an agency's evaluation to determine whether the agency acted reasonably and in accord with the solicitation's evaluation criteria and applicable procurement statutes and regulations. Innovative Test Asset Sols., LLC, B-411687, B-411687.2, Oct. 2, 2015, 2016 CPD ¶ 68 at 5. We will not substitute our judgment for that of the evaluators, but we will sustain a protest where the agency's conclusions are inconsistent with the solicitation's evaluation criteria, are undocumented, or are not reasonably based. Id.

Agencies are required to evaluate proposals based solely on the factors identified in the solicitation, and must adequately document the bases for their evaluation conclusions. Intercon Assocs., Inc., B-298282, B-298282.2, Aug. 10, 2006, 2006 CPD ¶ 121 at 5. While agencies properly may apply evaluation considerations that are not expressly outlined in the RFP if those considerations are reasonably and logically encompassed within the stated evaluation criteria, there must be a clear nexus between the stated and unstated criteria. Raytheon Co., B-404998, July 25, 2011, 2011 CPD ¶ 232 at 15-16. An agency may not give importance to specific factors, subfactors, or criteria beyond that which would reasonably be expected by offerors reviewing the stated evaluation criteria. Risk Analysis & Mitigation Ptrs., B-409687, B-409687.2, July 15, 2014, 2014 CPD ¶ 214 at 6.

A strength is defined as “[a]n element of the proposal that . . . will be advantageous to the Government . . . . This element may increase the likelihood of successful contractor performance . . . .” RFP at 176. The Air Force awarded a strength to SEC's proposal under the technical workforce management subfactor because “[DELETED] advantageous to the Government.” AR, Tab 67, Final Evaluation Briefing, at 58. The agency found that [DELETED] “increases the likelihood that the Offeror will be able to provide the Government the workforce it needs in a timely manner.” AR, Tab 66, Proposal Analysis Report, at 48.

After assessing the strength, the agency insisted that, contrary to the definition of a strength, the advantageous element of the proposal must also “ensure,” the anticipated result, instead of simply increasing its likelihood. Id. at 57 (“[DELETED] has the potential to increase the likelihood that the Offeror will be able to provide the Government the workforce it needs in a timely manner, but it does not ensure it.”); RFP at 176. The evaluators' insistence that SEC's strength “ensure” the likely outcome is inconsistent with the solicitation's definition of a strength.

The agency argues that it did not devalue the strength, and that the additional evaluation was only with regard to the subfactor adjectival rating, such that the strength was not considered substantial enough to increase the adjectival rating. COSF at 22. The record shows that the agency only considered the adjectival rating after the strength was first devalued for failing to “ensure” the result. AR, Tab 67, Final Evaluation Briefing, at 57. Accordingly, we sustain the protest because the application of this unstated evaluation criteria significantly lowered the assessment of SEC's

strength and also prevented the agency from reasonably evaluating the adjectival rating. See Phoenix Air Grp., Inc., B-412796.2, B-412796.3, Sept. 26, 2016, 2016 CPD ¶ 308 at 12.

In a second example of the application of unstated evaluation criteria, the agency awarded a strength to SEC's proposal under the aircraft stores compatibility engineering analysis and support subfactor for its employees' expertise with specific software:

The Offeror's knowledge and expertise demonstrated in the proposal in the application of Nastran and Patran, S&C COMSAC, MATLAB routines, FLIP4 6DOF, Tvis2, DatamineQT, NzW, Drag Index, F16SnCcalc, F22ATLASGUI, and Lockheed Martin's F-16 and F-22 ATLAS and CFD [computational fluid dynamics] tools, to conduct engineering analysis, is advantageous to the Government.

AR, Tab 67, Final Evaluation briefing, at 55. This subfactor requires offerors to "demonstrate their sound understanding of managing a technical complex, information-focused engineering, analysis, advanced computing, and modeling and simulation environment." RFP, Amend. 0005, at 60. In awarding this strength to SEC, the Air Force found that the experience of SEC's employees "minimizes the potential for project delays and provides the potential for increased productivity." AR, Tab 67, Final Evaluation briefing, at 55. Further, the employees' expertise "reduces the overall cost of training and frees Government engineers from additional training responsibilities." Id.

The agency then concluded that the awarded strength was of little value because of the considerations below:

- We expect that any firm awarded the contract would attempt to retain this workforce to the maximum extent possible.
- This Offeror's management team has knowledge of the tools by virtue of its incumbency.
- We would expect that any management team would quickly develop a similar level of knowledge.
- As such, the expertise indicated in the Offeror's proposal would not differ significantly from what could be expected in the long run from any awardee.
- Therefore, the Offeror's knowledge and expertise provides a temporary benefit, but does not provide sufficient benefit to justify rating the subfactor higher than Acceptable.

Id. at 54.

As defined above, a strength is "an element of the proposal that has merit . . . by having, for instance, a positive impact on cost, customer services, schedule, accounting procedure, or improved efficiency." RFP at 176. The record shows that the Air Force's subsequent negative conclusions are based on the speculative prospect that an

unknown non-incumbent awardee will both retain SEC's employees and will propose a management team that will "quickly" become experts in the named software. However, these reasons for devaluing SEC's strength do not address the grounds provided for awarding the strength, e.g., lower costs and increased productivity. In this regard, even if a non-incumbent awardee retained most of SEC's employees and quickly learned the software, these facts do not negate the agency's findings regarding the merits of SEC's proposal. Furthermore, offerors were not reasonably on notice that their proposals could be devalued if another offeror proposed the same workforce. Risk Analysis & Mitigation Ptrs., supra, at 6. Accordingly, we sustain this protest ground because the application of unstated evaluation criteria lowered the assessment of a strength for SEC's proposal and also prevented the agency from assigning the adjectival rating. See Phoenix Air Grp., Inc., supra, at 12.

### SEC Technical Evaluation and Past Performance Records

SEC argues that the Air Force failed to award SEC strengths, where support for those strengths was located in SEC's past performance records. SEC Comments at 11. Specifically, SEC contends that the agency ignored several strengths that "were identified in the CPARS [contractor performance assessment reporting system] of [SEC]'s predecessor contract." SEC Comments at 11. The protester argues that because "[t]hose comments all emanated in some fashion, or were authored by, members of the SSEB [source selection evaluation board] and its technical team," those comments "were far 'too close at hand' to be ignored." SEC Comments at 11. We disagree.

The agency contends that it was not required to evaluate SEC's CPARS information as part of SEC's technical proposal because the CPARS information was not included in SEC's technical proposal and the technical evaluators properly limited their evaluation to information in the technical volume. MOL at 22-23. Specifically, information from offerors' past performance volumes was not used to assess the technical volume, and the agency contends it was "not permitted[] to credit [SEC] with technical strengths for its past performance references." MOL at 23. We agree.

We have recognized that, in certain limited circumstances, an agency has an obligation to consider information bearing on the offeror's past performance when it is "too close at hand" to require offerors to shoulder the inequities that spring from an agency's failure to obtain and consider the information. See e.g., Affordable Eng'g. Servs., Inc., B-407180.4 et al., Aug. 21, 2015, 2015 CPD ¶ 334 at 13. Our Office has generally limited application of this principle to situations where the alleged "too close at hand" information relates to contracts for the same services with the same procuring activity, or information personally known to the evaluators. Exelis Sys. Corp., B-407111 et al., Nov. 13, 2012, 2012 CPD ¶ 340 at 22. This doctrine, however, is not intended to remedy an offeror's failure to include information in its proposal. Great Lakes Towing Co. dba Great Lakes Shipyard, B-408210, June 26, 2013, 2013 CPD ¶ 151 at 8; FN Mfg. LLC, B-407936 et al., Apr. 19, 2013, 2013 CPD ¶ 105 at 3.

It is the offeror's burden to submit an adequately written proposal, including all information that was requested or necessary to demonstrate its capabilities in response to a solicitation. Palmetto GBA, LLC; CGS Admins., LLC, B-407668 et al., Jan. 18, 2013, 2013 CPD ¶ 53 at 21-22; Wegco, Inc., B-405673.3, May 21, 2012, 2012 CPD ¶ 161 at 2. An offeror may not rely on its prior experience with an agency as a substitute for including required information in its proposal. See ASPEC Eng'g, B-406423, May 22, 2012, 2012 CPD ¶ 176 at 3 n.5. Where the proposal omits or provides inadequate information addressing fundamental evaluation factors, the offeror runs the risk of an adverse agency evaluation. Id.

Unlike a past performance evaluation where an offeror often must rely on the submission of information from third parties, here SEC was in control of what it included in its technical proposal. SEC exercised its own judgment not to include certain details concerning its technical approach. Thus, there was no inequity in the agency's decision to base its evaluation on SEC's proposal--as written--instead of supplementing it with the agency's understanding of the firm's experience under prior projects. Great Lakes Towing Co. dba Great Lakes Shipyard, supra, at 8 (agency not obligated to consider positive information outside of protester's technical proposal, despite knowledge of protester's experience on prior projects). For these reasons, this protest ground is denied.

#### Best-Value Tradeoff and Prejudice

Because SEC has challenged the agency's technical and price evaluations, and because we found the errors as described above, we consider their effect on the Air Force's best-value tradeoff decision, i.e., whether the defects in the evaluation resulted in prejudice to the protester. For the reasons below, we conclude that there is a reasonable possibility that SEC was prejudiced by the agency's errors.

As a general matter, source selection officials enjoy broad discretion in making tradeoffs between the comparative merits of competing proposals in a best-value setting; such tradeoffs are governed only by the test of rationality and consistency with the solicitation's evaluation criteria. PricewaterhouseCoopers LLP, B-409537, B-409537.2, June 4, 2014, 2014 CPD ¶ 255 at 12. In a best-value tradeoff procurement, it is the function of the source selection authority to perform a tradeoff between cost and non-cost factors, that is, to determine whether one proposal's superiority under the non-cost factor is worth a higher cost. Coastal Int'l Sec., Inc., B-411756, B-411756.2, Oct. 19, 2015, 2015 CPD ¶ 340 at 14.

Here, the best-value tradeoff was flawed because it rests on various evaluation errors. See, e.g., SSDD, at 7 (requiring a strength to "ensure" the likely result). The agency's devaluation and unequal assessment of strengths potentially minimized differences between the proposals. In this regard, the agency stated that because the "offerors received identical subfactor ratings of Acceptable (Green), they are rather similar in merit" for the aircraft stores compatibility engineering analysis and support subfactor. Id. at 4. As to the technical workforce management factor, the agency found that "since

[the] offerors received identical ratings of Acceptable (Green) they are similarly advantageous.” Id. at 7. The Air Force arrived at the same result for the organizational conflict of interest subfactor (id. at 8) and the program management subfactor (id. at 9). The agency concluded that “[e]ach offeror[’]s past performance record totals to confidences that are indistinguishable from one another” and “the relative merits or disadvantages . . . are equal.” Id. at 12. As a result of finding the proposals essentially equal across all non-price factors, the Air Force’s best-value decision rested on ERC’s price advantage.<sup>9</sup> Id. at 13.

Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency’s actions, that is, unless the protester demonstrates that, but for the agency’s actions, it would have had a substantial chance of receiving the award. Raytheon Co., B-409651, B-409651.2, July 9, 2014, 2014 CPD ¶ 207 at 17. We resolve any doubts regarding prejudice in favor of a protester. Intelsat Gen. Corp., B-412097, B-412097.2, Dec. 23, 2015, 2016 CPD ¶ 30 at 19-20. In this regard, had the Air Force properly evaluated ERC’s proposed compensation plan under FAR provision 52.222-46, it is possible that the agency would have found risk in ERC’s proposal if ERC offered a decrease in compensation for incumbent employees. Similarly, if the agency had evaluated offerors equally, the strengths awarded to SEC and ERC might differ in a manner that could benefit SEC. Thus, we find that there is a reasonable possibility of prejudice to SEC, and on this basis, we sustain the protest.

## CONCLUSION AND RECOMMENDATION

In sum, we sustain SEC’s protest regarding the Air Force’s evaluation of ERC’s professional compensation plan, finding that the agency did not conduct the evaluation required under FAR provision 52.222-46(b). We also sustain the protest regarding the challenge to the agency’s technical evaluation, finding that the agency applied unstated evaluation criteria and that proposals were not evaluated equally in the technical evaluation. We conclude that there is a reasonable possibility that SEC was prejudiced by these errors.

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<sup>9</sup> We note that adjectival ratings serve only as a guide to, and not a substitute for, intelligent decision-making. Science Applications Int’l Corp., B-407105, B-407105.2, Nov. 1, 2012, 2012 CPD ¶ 310 at 7. Agencies should reasonably consider the underlying bases for ratings, including the advantages and disadvantages associated with the specific content of competing proposals, in a manner that is fair and equitable and consistent with the terms of the solicitation. See MD Helicopters, Inc.; AgustaWestland, Inc., B-298502 et al., Oct. 23, 2006, 2006 CPD ¶ 164 at 15. By treating all offerors as acceptable, without a comparative evaluation, the agency effectively negated any potential advantages in any proposal. Patriot Sols., B-413779, Dec. 22, 2016, 2016 CPD ¶ 376 at 5. See also Technical Support Servs., Inc., B-279665, B-279665.2, July 8, 1998, 98-2 CPD ¶ 26 (protest sustained where agency disregarded RFP’s best-value scheme and awarded to offeror on a lowest-priced, technically-acceptable basis).

We recommend that the agency reevaluate ERC's proposed compensation plan in accordance with FAR provision 52.222-46, and that the agency reevaluate technical proposals. We further recommend that the agency perform a new best-value tradeoff analysis and, if an offeror other than ERC is selected, we recommend that the agency terminate the award to ERC and make a new award. Finally, we recommend that the agency reimburse SEC its costs associated with filing and pursuing these protests, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d). The protester's certified claims for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after the receipt of this decision. Id. at § 21.8(f).

The protest is sustained in part and denied in part.

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