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# Decision

**Matter of:** Trident Vantage Systems, LLC; SKER-SGT Engineering & Science, LLC

**File:** B-415944; B-415944.2; B-415944.4; B-415944.5

**Date:** May 1, 2018

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## DIGEST

1. Protests alleging an impaired objectivity organizational conflict of interest are denied where awardee's affiliated entity's performance on another contract does not include evaluating or testing the awardee's products or solutions; the agency maintains control over these functions.
2. Protest of agency's evaluation of relevant experience is sustained where the record is insufficiently documented to demonstrate that the agency meaningfully considered whether the scope of the offerors' past performance contracts were comparable to the procurement at issue; in addition, agency's overall relevancy determinations are insufficiently documented to assess the reasonableness of the agency's conclusions.
3. Protests of agency's cost realism adjustments are sustained where agency failed to fully consider proposed staffing efficiencies in one protester's proposal, and denied where agency found insufficient support for other protester's staffing approach.

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## DECISION

Trident Vantage Systems, LLC, (TVS) a section 8(a) small business of Greenbelt, Maryland, and SKER-SGT Engineering & Science, LLC, (SSES) a section 8(a) small business of St. Ignatius, Montana, protest the award of a contract to HX5, LLC, under request for proposals (RFP) No. NNC16ZL009R, which was issued by the National Aeronautics and Space Administration (NASA) for engineering, research, and scientific support for NASA's Glenn Research Center (GRC). The protesters object to numerous aspects of the agency's evaluation of proposals and source selection decision. The protesters also maintain that the agency failed to consider an organizational conflict of interest.

We deny TVS's protest, and sustain in part and deny in part SSES's protest.

## BACKGROUND

NASA issued the RFP on January 31, 2017, as a section 8(a) small business set-aside. Agency Report (AR), Tab 4, RFP, at 0072.<sup>1</sup> The solicitation contemplated the award of a cost-plus-fixed-fee indefinite-delivery, indefinite-quantity (IDIQ) contract--referred to as the Glenn Engineering and Research Support (GEARS) contract--for a period of performance of up to 7 years and 9 months.<sup>2</sup> AR, Tab 7, RFP amend. 3, at 0801, 0897.<sup>3</sup> The RFP's statement of work (SOW) identified three categories of support the contractor was to provide: research and engineering support (which was the bulk of the contract); facilities, testing, and manufacturing engineering support; and project schedule support.<sup>4</sup> AR, Tab 4, SOW, at 0221. The GEARS contract was further delineated between "base" work and IDIQ work. Id. at 0222. The base work

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<sup>1</sup> The agency submitted a consolidated report in response to the protests. In addition, NASA stamped each page of its report, including the RFP, with a Bates number. Citations to documents contained in the agency report are to the Bates number.

<sup>2</sup> The period of performance included an up to 90-day phase-in period, a 2-year base period, a 2-year option period, a 1-year option period that could be extended 6 months, and a 2-year award term. AR, Tab 7, RFP amend. 3, at 0801.

<sup>3</sup> Citations hereafter to the solicitation are to the final version of the RFP, issued as amendment 3 on March 17, 2017, unless otherwise indicated.

<sup>4</sup> The GEARS contract is a consolidated follow-on procurement to two existing NASA contracts, the Glenn Engineering and Scientific Support-3 (GESS-3) contract and the Advanced Research and Technology Support (ARTS) contract. Contracting Officer's Statement (COS) (TVS) at 1. The GESS-3 contractor was a joint venture between Vantage Systems, Inc., (VSI) and Stinger Ghaffarian Technologies (SGT). Id. In the procurement at issue here, VSI is competing for the follow-on effort as part of TVS, and SGT is competing as part of SSES; thus, both protesters lay claim to incumbency. Id.

encompassed the technical activities supporting GRC's overall mission; the IDIQ tasks were defined as "non-recurring, one-time, non-routine activities."<sup>5</sup> Id. at 0222-23.

Pursuant to the RFP, award was to be made to the responsible offeror whose proposal met the requirements of the solicitation and provided the best value to the government. RFP at 0925. The RFP identified the following three evaluation factors: mission suitability, relevant experience and past performance, and cost. Id. The mission suitability factor was "approximately equal" to relevant experience/past performance, which was "approximately equal" to cost. Id. at 0934. The mission suitability and relevant experience/past performance factors, when combined, were "significantly more important" than cost. Id. at 0935.

The mission suitability factor focused on the quality of the work to be performed and the offeror's ability to accomplish the work proposed. Id. at 0925. The factor encompassed two equally-weighted subfactors: management approach and overall understanding of the requirements. Id. at 0927. Each subfactor was made up of four elements, including topics that covered an offeror's organizational structure, staffing, phase-in plan, and offsite facility (for the management approach subfactor), as well as an offeror's response to representative technical tasks, technical/management approach, risk management plan, and innovations and efficiencies (for the understanding of requirements subfactor). Id. at 0906-10. Pursuant to the RFP, NASA would evaluate an offeror's mission suitability response to determine whether it clearly demonstrated how the offeror would meet or exceed all requirements of the SOW and RFP. Id. at 0927. The RFP provided that the agency would assign an adjectival rating and perform a numerical scoring under the mission suitability subfactors. Id. at 0926

For the relevant experience and past performance, the RFP instructed offerors to submit past experience and performance information for past or current contracts that were relevant in terms of size, content, and complexity to the SOW. Id. at 0921. Offerors were to provide a variety of information for each contract, such as the contract title, client name, value, contract type, role of the offeror (i.e., prime or subcontractor), and a brief description of the work. Id. at 0922. In addition, the RFP provided for the submission of past performance questionnaires (PPQs), and advised that NASA would collect and review additional past performance information from government databases, as well as "other sources of information." Id.

In evaluating relevant experience and past performance, the solicitation advised that only contracts NASA considered "relevant in scope as compared with this SOW will be considered." Id. at 0932. Then, the agency would assign an overall level of confidence rating based on two considerations: the relevancy of an offeror's prior efforts and the

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<sup>5</sup> The base work encompassed four broad task areas: contract administration and business management; research and engineering support environment; other direct costs; and technical requirements. SOW at 0222. Most of the SOW tasks were in the technical requirements task area. See id. at 0234-97 (SOW §§ 3.9.1-3.9.3).

offeror's performance on those efforts.<sup>6</sup> Id. With respect to relevancy, the RFP explained that the agency would evaluate the contract experience to determine its overall relevancy to the GEARS SOW solicitation requirements. Id. The RFP further advised that consideration would be given to "contract scope, customer, size, type, length, and role as prime or subcontractor." Id. With respect to performance, the RFP stated that the agency would consider technical performance, business performance, and management performance on prior contracts. Id.

Next, with respect to cost, the RFP provided that the cost factor would be used to determine what the offeror's proposal will likely cost the government. Id. at 0931. The RFP included detailed instructions for the preparation and submission of cost proposals, which were to consist of three parts. The first part was to cover general cost information (e.g., subcontract cost analysis, labor estimates); the second part was to contain the RFP's numerous cost templates; and the last part was for the offeror's cost narrative/basis of estimate. Id. at 0911-21. With respect to labor estimates, the RFP provided that "[f]or informational purposes only, the Government is informing the Offeror that its estimated staffing level (not including IDIQ) is approximately 265 WYEs [Work Year Equivalents] per contract year."<sup>7</sup> Id. at 0913. The RFP also included a table identifying the incumbent labor demographics for 265 WYEs (i.e., labor category, WYEs, and labor rate). Id. at 0914. With respect to the cost narrative, the RFP instructed offerors to provide support for all proposed estimates. Id. at 0921. The narrative was to "explain in detail" the basis of all projections, among other things. Id.

In evaluating cost, the RFP advised that a cost realism analysis would be conducted to ensure that a realistic cost is "determined and considered" by NASA. Id. at 0931. Specifically, the RFP pointed to the cost analysis techniques outlined in Federal Acquisition Regulation (FAR) section 15.404. Id. The RFP also warned as follows:

A lack of resource realism may adversely affect the Offeror's Mission Suitability findings and scores and may result in cost realism adjustments under the cost factor. Similarly, an Offeror's failure to substantiate the cost of its proposed efficiencies and/or unique methods of performance and materials may adversely affect the Offeror's Mission Suitability

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<sup>6</sup> The RFP defined six level of confidence ratings that ranged from very high level of confidence to very low level of confidence. RFP at 0933-34. Of relevance here, a high level of confidence rating was reserved for offerors with "highly pertinent" past performance, and that demonstrated "very effective performance that would be fully responsive to contract requirements with contract requirements accomplished in a timely, efficient, and economical manner for the most part with only minor problems with little identifiable effect on overall performance." Id. at 0933.

<sup>7</sup> A WYE could be composed of one employee or several part-time employees. RFP at 0918.

findings and scores and may result in cost realism adjustments under the cost factor.

Id. Pursuant to the RFP, an offeror’s probable cost would be used “for the purposes of selection to determine the best value.” Id. at 0932.

#### Proposal Submission and Evaluation

Six firms, including TVS, SSES, and HX5, submitted proposals prior to the April 2017 submission deadline. COS (TVS) at 4. A NASA source evaluation board (SEB) evaluated proposals under each factor and documented findings in a single, consensus briefing for the source selection authority (SSA). With respect to the mission suitability factor, the SEB identified proposal strengths and weaknesses and assigned proposals adjectival ratings and numerical scores for each element under both subfactors. See AR, Tab 25, SSA Briefing Charts, at 3322-77. For the relevant experience/past performance factor, the SEB assessed the past performance information included in the proposals and reviewed PPQs and government databases. Id. at 3390-3414, 3461-72. The evaluators assigned each proposal either a strength or significant strength for both relevancy and performance, which resulted in a level of confidence rating. Id. at 3396. With respect to cost, proposed costs were reviewed for compliance with the RFP instructions, consistency with the technical approach, mathematical errors, and overall cost realism and reasonableness. COS (TVS) at 4; see AR, Tab 25, SSA Briefing Charts, at 3378-89, 3416-60. The proposals of TVS, SSES, and HX5 were evaluated as follows:

	<b>TVS</b>	<b>SSES</b>	<b>HX5</b>
<b>Mission Suitability Score</b>	550/1,000	515/1,000	740/1,000
<b>Management Approach<sup>8</sup></b> (500 points)	Good (265)	Fair (200)	Good (325)
<b>Understanding of the Requirements</b> (500 points)	Good (285)	Good (315)	Very Good (415)
<b>Relevant Experience &amp; Past Performance</b>	Very High Confidence	Very High Confidence	High Confidence
<b>Proposed Cost</b>	\$320.42 million	\$277.41 million	\$374.37 million
<b>Probable Cost</b>	\$346.60 million	\$338.82 million	\$375.80 million

<sup>8</sup> Possible adjectival ratings for the mission suitability subfactors included excellent, very good, good, fair, and poor. RFP at 0926.

Id. at 3326, 3386, 3396.

In assessing TVS's and SSES's proposals under the management approach subfactor, the SEB assigned both proposals a similar significant weakness pursuant to the offsite facility evaluation element. Specifically, the SEB criticized both firms for presenting an "inadequate and unrealistic plan" for the establishment of the facility. Id. at 3333, 3366. Of relevance here, the findings were due, in part, to the SEB's concern that the proposed offsite facilities ultimately would not have sufficient capacity. Id. SSES also was assigned a significant weakness under the staffing element due to an "unrealistic" staffing and compensation plan. Id. at 3331.

With respect to relevant experience and past performance, SSES and TVS were assigned significant strengths for the relevancy of their prior experience; the relevancy of HX5's prior contracts earned the firm a strength. Id. at 3397, 3406, 3409. As for the firms' performance on prior contracts, the SEB assigned each of these three firms a significant strength. Id. at 3398, 3407, 3410.

The SEB briefed the deputy director of GRC, who served as the SSA, on the evaluation findings in October 2017. COS (TVS) at 4. Following the briefing, the SSA prepared a source selection statement documenting her award determination. See AR, Tab, 26, Source Selection Statement (SSS), at 3473-88. In her statement, the SSA acknowledged TVS's and SSES's advantages in the relevant experience and past performance factor. Id. at 3486-87. She concluded, however, that the higher ratings stemmed primarily from the firms' performance on the predecessor contracts, which she did not consider to be a "material advantage." Id. at 3486. In addition, despite the protesters' lower probable costs, the SSA was most impressed with HX5's "unblemished" and "superior technical solution." Id. Ultimately, the SSA determined that HX5's proposal represented the best value to NASA, and the agency thereafter awarded the firm the GEARS contract.

TVS and SSES received notice of the award on January 8, 2018, and subsequently received debriefings. These protests followed.<sup>9</sup>

## DISCUSSION

TVS and SSES protest numerous aspects of the evaluation of proposals and source selection decision. First, the protesters contend that the award to HX5 resulted in an impermissible impaired objectivity organizational conflict of interest (OCI). SSES also raises allegations regarding NASA's evaluation of relevant experience. In addition, both firms challenge various cost realism adjustments to their proposed costs. Lastly, as a

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<sup>9</sup> A third disappointed offeror protested the award to HX5 as well. That protester subsequently withdrew its protest after receipt of the agency's report.

result of the allegedly flawed evaluation, in addition to other complaints, the protesters contest the SSA's source selection decision.<sup>10</sup>

Based on our review of the record, we sustain the protest because NASA's evaluation of relevant experience appears defective and insufficiently documented; NASA failed to consider SSES's unique technical approach as part of its cost realism adjustment; and the SSA's tradeoff is flawed given these evaluation errors.<sup>11</sup> The remainder of the protest grounds, including the OCI allegations and TVS's cost realism challenges addressed herein, are denied.

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<sup>10</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 the protesters' objections to the significant weaknesses assigned to their proposals due to their proposed offsite facilities having insufficient capacity. In this respect, the RFP plainly required that offsite facilities be capable of accommodating 75 percent of the "total WYEs" for the GEARS effort, and the same RFP provision identified the total incumbent staffing, including IDIQ tasks, at 355 people. RFP at 0884-85. In objecting to NASA's evaluation, the protesters generally take the position that offerors should have disregarded the 355 figure, and instead based their facility capacity on a different staffing estimate in the RFP instructions that did not include IDIQ or program management tasks. On this point, we find the protesters' interpretation of the RFP to be unsupported and unreasonable. In addition, TVS's protest position is undermined by the contents of its proposal, in which the firm expressly based its offsite facility capacity on the agency's reading of the solicitation. See AR, Tab 13 TVS Cost Proposal, at 1497, 1499, 1721, 1762; see also PricewaterhouseCoopers LLP; IBM U.S. Federal, B-409885 et al., Sept. 5, 2014, 2014 CPD ¶ 289 at 10-11 (finding unpersuasive protesters' post-hoc interpretation of solicitation provision where interpretation was at odds with the contents of their proposals).

<sup>11</sup> In addition, TVS argues that HX5 failed to adhere to the solicitation's formatting requirements that restricted the font size in charts and figures that were "primarily text." See TVS Comments/Supp. Protest at 3-8; RFP at 0901-02. While the record supports that HX5 appears not to have complied with the RFP format requirement in nearly all of its charts and figures, TVS included several noncompliant figures in its proposal as well. See Supp. COS (TVS) at 1 (citing TVS's figures of "primarily text" that used font smaller than permitted by the RFP). As such, while we decline to sustain TVS's protest on this basis, we encourage NASA, as part of its reevaluation of proposals, to consider the extent to which offerors gained a competitive advantage by virtue of not complying with the RFP's formatting restrictions, and take further action to remedy any concerns as necessary.

## Impaired Objectivity OCI

The protesters first argue that the agency failed to meaningfully consider an alleged impaired objectivity OCI stemming from HX5's performance on a different NASA contract. Specifically, HX5 Sierra, LLC (a joint venture between HX5 and another firm), performs the test facility operations, maintenance, and engineering services (TFOME-II) contract for GRC. Dec. of TFOME-II CO, attach. A, TFOME-II Contract, at 1. According to the protesters, HX5 has an impaired objectivity OCI because HX5 Sierra "will evaluate HX5's own work on the GEARS contract." SSES Protest at 23.

Contracting officials must avoid, neutralize or mitigate potential significant OCIs so as to prevent an unfair competitive advantage or the existence of conflicting roles that might impair a contractor's objectivity. FAR §§ 9.504(a), 9.505. The situations in which OCIs arise, as addressed in FAR subpart 9.5 and the decisions of our Office, fall under three broad categories: unequal access to information, biased ground rules, and impaired objectivity. E.g., Enterprise Info. Servs., Inc., B-405152 et al., Sept. 2, 2011, 2011 CPD ¶ 174 at 7-8. As relevant here, an impaired objectivity OCI occurs when a firm's work under one government contract could allow the firm to evaluate itself, either through an assessment of performance under another contract or an evaluation of proposals. FAR § 9.505-3; L-3 Servs., Inc., B-400134.11, B-400134.12, Sept. 3, 2009, 2009 CPD ¶ 171 at 5. In these cases, the concern is that the firm's ability to render impartial advice to the government could appear to be undermined by its relationship with the entity whose work product is being evaluated. L-3 Servs., Inc., supra.

In reviewing bid protests that challenge an agency's conflict of interest determinations, our Office reviews the reasonableness of the contracting officer's investigation and, where an agency has given meaningful consideration to whether an OCI exists, we will not substitute our judgment for the agency's, absent clear evidence that the agency's conclusion is unreasonable. See Enterprise Info. Servs., Inc., supra, at 8; Guident Techs., Inc., B-405112.3, June 4, 2012, 2012 CPD ¶ 166 at 7. A protester must identify "hard facts" that indicate the existence or potential existence of a conflict; mere inference or suspicion of an actual or potential conflict is not enough. DV United, LLC, B-411620, B-4116220.2, Sept. 16, 2015, 2015 CPD ¶ 300 at 6. The identification of conflicts of interest are fact-specific inquiries that require the exercise of considerable discretion. Guident Techs., Inc., supra.

Here, we find unobjectionable the agency's determination that no impaired objectivity OCI exists. Through declarations, the TFOME-II contracting officer clarified the scope of the TFOME-II contract, as well as the role of HX5 Sierra. Significantly, according to the contracting officer, nothing in HX5 Sierra's work under TFOME-II could give HX5 the opportunity to benefit on GEARS (and vice versa).<sup>12</sup> See Dec. of TFOME-II CO ¶ 9.

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<sup>12</sup> In addition to the TFOME-II contracting officer's explanations, the GEARS contracting officer represents that he and the SEB were "aware of and generally knowledgeable about the TFOME-II contract, including its terms and its scope, and HX5's role with  
(continued...)



The contracting officer explains that the TFOME-II contractor provides “facility-focused” support services related to the management, operations, maintenance, and engineering of test facilities and laboratories at GRC. Id. ¶ 11. Under the TFOME-II SOW, the “customers” are NASA projects that require testing of NASA “articles.” Id. ¶ 10. That is, the testing activities that the TFOME-II contractor supports are in service of NASA projects and of NASA articles, not the GEARS contractor and, notably, not articles of the GEARS contractor. Id.

Moreover, despite the protesters’ claims otherwise, the TFOME-II contractor does not actually direct or control any test activities; rather, NASA either performs the testing or maintains complete control over the test activities. See id. ¶ 12. When a NASA organization conducts testing using the facilities supported by TFOME-II, NASA obtains any “evaluative engineering support” from other NASA resources, not the TFOME-II contractor.<sup>13</sup> Id. In fact, the TFOME-II SOW does not provide for the evaluation of any test articles by the contractor.<sup>14</sup> Id. ¶ 13; see also id., attach B., TFOME-II SOW, at 14-18. Similarly, with respect to test results, the contracting officer explains that the TFOME-II contractor’s only role is to transmit the final data to the customer. Dec. of TFOME-II CO ¶ 13. Likewise, even test scheduling is controlled by NASA, not the TFOME-II contractor. Id. ¶ 14. According to the contracting officer, the agency maintains complete control over all test activities that the TFOME-II contractor might support, and all decision-making during test activities resides with NASA. Id. ¶ 13. Thus, NASA insists that the TFOME-II contract does not present an opportunity for HX5 Sierra to exercise subjective judgment with respect to activities that an affiliated entity might perform under GEARS. Id. ¶ 11; Supp. Dec. of TFOME-II CO ¶ 5.

Based on the TFOME-II contracting officer’s explanations, we find no merit to the protesters’ claims that awarding the GEARS contract to HX5 resulted in an impaired objectivity OCI. In this regard, the declarations convincingly refute the protesters’ OCI

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(...continued)

respect to that contract. . . .” Supp. COS (TVS) at 5. Based on their understanding of the TFOME-II contract, including the fact that it is focused on an entirely different NASA organization and different technical areas at GRC than GEARS, they “had no reason to identify a risk of impaired objectivity on the part of HX5.” COS (SSES) at 12.

<sup>13</sup> Any references in the TFOME-II SOW to the contractor providing assessments or recommendations--such as those highlighted by the protesters--were with respect to the management of test facilities, not the development of NASA test products or articles or the evaluation of the results of the testing. Dec. of TFOME-II CO ¶ 12; see also id., attach B., TFOME-II SOW, at 14-18.

<sup>14</sup> The TFOME-II contractor’s sole responsibility with respect to test articles is at the “checkout,” (the final stage of the test preparation phase) which consists only of “operational verification of the components and subsystems that make up the configured test system.” Dec. of TFOME-II CO ¶ 13; see also id., attach B., TFOME-II SOW, at 14-15.

allegations. More specifically, the various hypothetical scenarios invented by the protesters to support their arguments reflect a misunderstanding of the nature of the TFOME-II contract, and do not exhibit the hard facts necessary to support an OCI charge. In addition, in assessing the merits of an alleged impaired objectivity OCI, we look for some indication that there is a direct financial benefit to the firm alleged to have the OCI, and there is none in this instance. See American Mgmt. Sys., Inc., B-285645, Sept. 8, 2000, 2000 CPD ¶ 163 at 5. Simply put, HX5 Sierra is not the entity testing HX5 products or solutions; HX5 receives no advantage by virtue of HX5 Sierra's performance under TFOME-II. Accordingly, this allegation is denied. See Accenture Fed. Servs., LLC, B-414268.3 et al., May 30, 2017, 2017 CPD ¶ 175 at 8-10 (denying allegation of impaired objectivity OCI where contractor at issue would not have the level of discretion or requisite decision-making authority implicit in protester's argument).

### Evaluation of Relevant Experience and Past Performance

SSES also protests NASA's evaluation of proposals under the relevant experience and past performance factor, specifically challenging the agency's relevancy determinations. The protester contends that the evaluators failed to consider scope as part of the assessment of relevancy, and that the contemporaneous record is inadequately documented to demonstrate a reasonable evaluation. See SSES Comments/Supp. Protest at 25-28. As discussed below, we sustain the protest because there is no indication in the contemporaneous record that the agency meaningfully considered the scope of the offerors' past performance contracts, as required by the solicitation; nor is there is sufficient documentation for our Office to assess the reasonableness of NASA's overall relevancy determinations.

Where a protester challenges a past performance evaluation, we will review the evaluation to determine if it was reasonable and consistent with the solicitation's evaluation criteria and procurement statutes and regulations, and to ensure that the agency's rationale is adequately documented. See Verdi Consulting, Inc., B-414103.2 et al., Apr. 26, 2017, 2017 CPD ¶ 136 at 9. While, as a general matter, the evaluation of an offeror's past performance is a matter within the discretion of the contracting agency, we will question an agency's evaluation of past performance where it is unreasonable or undocumented. Clean Harbors Env'tl. Servs., Inc., B-296176.2, Dec. 9, 2005, 2005 CPD ¶ 222 at 3. The agency's evaluation must be sufficiently documented to allow our Office to review the merits of a protest.<sup>15</sup> Apptis, Inc., B-299457 et al., May 23, 2007, 2008 CPD ¶ 49 at 10. Where an agency fails to document or retain evaluation materials, it bears the risk that there may not be adequate supporting rationale in the record for us to conclude that the agency had a reasonable basis for its

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<sup>15</sup> In this regard, the FAR requires that agencies sufficiently document their judgments supporting their proposal evaluations. See FAR §§ 4.801(b), 15.305(a), 15.308; Deloitte Consulting, LLP, B-412125.2, B-412125.3, Apr. 15, 2016, 2016 CPD ¶ 119 at 15.

evaluation conclusions. See Navistar Def., LLC; BAE Sys., Tactical Vehicle Sys. LP, B-401865 et al., Dec. 14, 2009, 2009 CPD ¶ 258 at 13.

As noted above, the solicitation required offerors to identify in their proposals past performance information for past or current contracts that were relevant to the GEARS requirements. RFP at 0921. Offerors were instructed to provide information about each contract, such as the contract title, contract type, total dollar value, and a brief description of the work. Id. at 0922. In reviewing offerors' past performance the solicitation provided that only contracts deemed relevant in terms of scope would be considered. Id. at 0932. The solicitation then contemplated an assessment of both relevance and performance, which would inform the level of confidence rating. Id. at 0932-33.

Here, the entirety of the contemporaneous evaluation record that discussed relevant experience and past performance is the SEB's briefing to the SSA; no other past performance report exists. See AR, Tab 25, SSA Briefing Charts, at 3390-3414, 3461-72. With respect to relevancy, for each offeror, the SEB included a table that provided the following six pieces of information for the contracts identified in the offerors' past performance narratives: contract number; contract name; customer or agency; contract value; contract type; and role as prime or subcontractor. E.g., id. at 3469 (listing two contracts for HX5 and four contracts for its proposed major subcontractor). The SEB simply copied this information from the proposals into the tables, and then, in an end column, assigned every contract an overall relevancy rating of either somewhat relevant, relevant, or highly relevant.<sup>16</sup> Id. Of concern here, the SEB briefing is devoid of any discussion of the scope of the offerors' past performance contracts, nor does it offer a rationale for the relevancy ratings assigned. No additional contemporaneous evaluation documentation regarding relevancy exists.

Given the lack of contemporaneous documentation, our Office has insufficient information from which to assess the reasonableness of the agency's past performance evaluation. First, there is no indication that the evaluators meaningfully considered the scope of the offerors' past performance contracts. This is problematic because the RFP contemplated that, as a threshold matter, only contracts relevant in scope as compared with the GEARS SOW would be considered. See RFP at 0932. Indeed, as SSES highlights, whether several past performance contracts were relevant in terms of scope is questionable, based on the limited information in the evaluation record. As examples,

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<sup>16</sup> For the record, although contract length was identified in the RFP as a consideration in the agency's overall assessment of relevance, as SSES points out, the record does not demonstrate that this aspect was taken into account. See RFP at 0932. In implementing our recommendation to reevaluate offerors' past performance and adequately document the evaluation conclusions, the agency may want to include this element as part of its assessment in order to be consistent with the RFP's evaluation criteria.

SSES points to HX5's TFOME-II contract, and its major subcontractor's "[DELETED]" contract and "[DELETED]" contract. See AR, Tab 25, SSA Briefing Charts, at 3469.

Here, we agree with SSES that nothing in the SEB's briefing or elsewhere in the contemporaneous record explained the relevance of the scope of these past performance efforts as compared to the GEARS contract. Indeed, even the agency's post-protest explanations fail to demonstrate that the evaluators meaningfully considered scope as part of the past performance assessment. For instance, with respect to the [DELETED] contract, the contracting officer explains only that the firm's performance of "operations and quality assurance services" under the engineering contract North American Industry Classification System (NAICS) code "translated into experience performing some of the work required under GEARS SOW 3.9.1 - 3.9.3." Supp. COS (SSES) at 11. In addition to being entirely post-hoc, the contracting officer's post-protest explanation does not withstand scrutiny. In this respect, we fail to see, and the agency has not explained, how simply having a NAICS code with the term engineering in it--notably, a different NAICS code than the GEARS procurement--demonstrated relevance to GEARS in terms of scope.<sup>17</sup> See Logistics Mgmt. Int'l, Inc., et al., B-411015.4 et al., Nov. 20, 2015, 2015 CPD ¶ 356 at 15-16 (finding that agency unreasonably concluded that all contracts in select NAICS codes were relevant to solicited work in a different NAICS code).

Moreover, the contracting officer's reference to the entirety of the SOW's technical requirements (i.e., SOW §§ 3.9.1-3.9.3) provides little clarity about why the operations element of the [DELETED] contract is relevant to GEARS in terms of scope. Likewise, the reference to quality assurance also is questionable given that the SOW sections cited do not contemplate notable quality assurance tasks.<sup>18</sup>

Thus, while the contracting officer maintains that "scope was a primary consideration for the SEB," the lack of any discussion whatsoever of scope in the contemporaneous record belies this assertion. See Supp. COS (SSES) at 11. Pursuant to the solicitation, only prior contracts relevant in scope were to be evaluated. The record, however, does

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<sup>17</sup> The protester argues, and NASA does not contest, that this NAICS code is one of the "broadest and most commonly used codes," which encompassed more than 13,000 new contracts in fiscal year 2016. SSES Supp. Comments at 17 n.73.

<sup>18</sup> As another example, the post-protest record seems to support a conclusion that the TFOME-II contract is not relevant to GEARS. For example, in communications regarding document production for the protest, the agency represented that, as part of the past performance evaluation, NASA determined that the functional areas of the TFOME-II contract "were not similar" to the GEARS effort. Email from NASA Counsel, Feb. 27, 2018 (3:10 p.m.) (responding to objections to document production). Similar representations were made by NASA regarding the dissimilarity of the two contracts in response to the OCI allegations, discussed above.

not demonstrate that the evaluators gave any meaningful consideration to the scope of the offerors' past performance contracts. We sustain the protest on this basis.

Additionally, the inadequate record is also troubling in that the SEB failed to document any rationale for the overall relevancy ratings assigned to the offerors' past performance contracts. As explained above, certain information for each contract was copied from the proposals, and then an overall relevancy rating was assigned. SSES argues that the relevancy conclusions appear inconsistent and some do not withstand scrutiny based on the information documented in the record. We agree.

For example, SSES cites its own Intelligent Systems Research and Development Support (ISRDS-2) past performance contract that the SEB deemed relevant. SSES Comments/Supp. Protest at 27. In arguing that the contract deserved a highly relevant rating, SSES points to at least two other contracts in the record that were assessed as highly relevant, despite having most of the same contract features as ISRDS-2 yet a lower contract value than ISRDS-2.<sup>19</sup> SSES Supp. Comments at 20-22. While NASA offers a post-protest explanation in an attempt to justify the overall relevant rating for ISRDS-2, nothing in the record offers any insight as to why the two other references warranted higher ratings; the agency failed to meaningfully respond to SSES's actual argument. Thus, our Office has an insufficient record to assess the reasonableness of the agency's relevancy conclusions. See Deloitte Consulting, LLP, supra (sustaining protest where the agency's contemporaneous documentation was insufficient to permit our Office to review the reasonableness of the past performance relevancy evaluation).

In addition to the lack of adequate documentation, SSES also challenges some of the conclusions in the limited past performance evaluation record. Specifically, the protester argues that HX5's high level of confidence rating appears inconsistent with the solicitation's ratings criteria. See SSES Comments/Supp. Protest at 28-29. In this regard, the solicitation provided that a high level of confidence rating was reserved for when an offeror's relevant past performance was "highly pertinent" to the GEARS procurement, among other criteria. RFP at 0933. The evaluation results, while uncertain given the inadequate documentation, show that HX5 had one prior contract deemed relevant and one deemed somewhat relevant, and its major subcontractor had one relevant contract and three somewhat relevant contracts. AR, Tab 25, SSA Briefing Charts, at 3469.

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<sup>19</sup> SSES also highlights that the evaluation record incorrectly identified its ISRDS-2 contract as a cost-plus-award-fee contract, when it was actually a cost-plus-fixed-fee contract, like the GEARS contract. SSES Comments/Supp. Protest at 27. The agency acknowledges that it misidentified the contract type, but contends that this minor error did not prejudice the protester. See Supp. Memorandum of Law (MOL) (SSES) at 13. Since we sustain the past performance challenges on other grounds, we do not reach a conclusion on this issue, but the agency may want to correct this error as well.

Thus, despite none of HX5's past performance contracts being assessed as highly relevant, and only two of its six projects being deemed relevant, the evaluators assigned HX5 the confidence rating reserved for offerors with "highly pertinent" past performance. We agree with the agency that the overall rating for the factor also was to take into account the performance aspect of the factor, and HX5 earned a significant strength for this evaluative aspect.<sup>20</sup> See RFP at 0932; AR, Tab 25, SSA Briefing Charts, at 3407. Nevertheless, in light of the ratings definitions, the awardee's level of confidence rating appears at odds with the underlying evaluation conclusions.<sup>21</sup>

In sum, we sustain SSES's relevant experience and past performance challenges. As discussed above, the record here does not support that the agency meaningfully assessed the scope of the offerors' past performance contracts, despite scope being a threshold consideration under the RFP. In addition, given the lack of any documented rationale for the overall relevancy ratings, our Office has no basis to assess the reasonableness of the agency's evaluation conclusions. Finally, the evaluation findings with respect to the relevancy of HX5's past efforts appear inconsistent with the high level of confidence rating assigned to the awardee's proposal. See Al Raha Group for Tech. Servs., Inc.; Logistics Mgmt. Int'l., Inc., B-411015.2, B-411015.3, Apr. 22, 2015, 2015 CPD ¶ 134 (sustaining protest where agency's evaluation of past performance was inconsistent with the terms of the solicitation and not adequately documented).

## Cost Realism Adjustments

### SSES's Cost Realism Challenges

Both protesters raise objections to the agency's cost realism adjustments to their respective proposals. As discussed below, we find SSES's concerns meritorious, and deny TVS's cost realism challenges.

With respect to SSES, the record reflects that in its mission suitability proposal, specifically in its discussion under the staffing element of the management approach subfactor, the firm proposed a reduction of WYEs over the life of the contract.<sup>22</sup> See

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<sup>20</sup> SSES does not protest NASA's evaluation of the awardee's performance on its prior contracts.

<sup>21</sup> While ratings are intended to be guides for intelligent decision making, Centerra Group, LLC, B-414768, B-414768.2. Sept. 11, 2017, 2017 CPD ¶ 284 at 8, the SSA here relied heavily on the SEB's rating conclusions, particularly with respect to relevant experience and past performance, in performing her cost/technical tradeoff. See, e.g., AR, Tab 26, SSS, at 3484-87.

<sup>22</sup> Specifically, while SSES proposed [DELETED] WYEs for the base year, its proposed staffing level decreased for each period of performance, ending with [DELETED] WYEs in year 7. AR, Tab 14, SSES MS Proposal, at 2332.

AR, Tab 14, SSES MS Proposal, at 2332. In this section of its proposal, the firm briefly explained as follows:

Team SSES's staffing plan is based on the Government's estimated staffing levels, our proposed innovations and efficiencies, and the understanding that NASA and its contractors will need to "do more for less" to accomplish mission objectives in the current budget environment.

Id. The firm also included a table outlining the staffing levels for each labor category.

Id. The remainder of this section of its proposal discussed SSES's strategies for recruitment, retention, and compensation. See id. at 2332-39.

As noted above, the SEB assigned the proposal a significant weakness under this staffing element of the management approach subfactor. Specifically, the SEB described SSES's staffing plan as an "unsubstantiated [DELETED]% WYE reduction throughout the life of the contact" and noted only that SSES "claims to 'do more for less' with a significant reduction in WYEs."<sup>23</sup> AR, Tab 25, SSA Briefing Charts, at 3331. The evaluators also included on this briefing slide a chart showing the total WYEs SSES proposed, and the SEB documented the "key areas" impacted by the WYE reductions. Id. No additional information was documented in the evaluation report regarding this weakness.

Citing solely to the SEB's significant weakness, the cost committee, as part of the cost realism analysis, performed a probable cost adjustment to "straight-line" SSES's year 1 WYEs across each year of performance. Id. at 3381, 3419, 3434. This WYE adjustment, coupled with an increase to direct labor rates to track with the government estimate, resulted in an upward adjustment of nearly \$22.5 million in direct labor alone.<sup>24</sup> Id. at 3434; see also AR, Tab 23, Cost Analysis Charts, at 3263.

SSES challenges the adjustment. Specifically, the protester contends that in making the cost adjustment, NASA failed to take into account numerous innovations and efficiencies that substantiated the proposed WYE reductions. SSES Comments/Supp. Protest at 9. More specifically, pursuant to the RFP instructions, see RFP at 0910, SSES included three pages of substantiating information in the innovations and efficiencies part of its proposal, which was to be assessed under the fourth element of

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<sup>23</sup> The SEB also pointed to "incomplete salary details" in SSES's total compensation plan as a second basis for the significant weakness. AR, Tab 25, SSA Briefing Charts, at 3331. SSES initially protested this finding, SSES Protest at 16-18, but subsequently withdrew the allegation. Email from SSES to Parties, Feb. 9, 2018 (3:37 p.m.).

<sup>24</sup> The record does not include a breakout of the impact of only the WYE adjustment. In addition, the cost committee's WYE adjustment also impacted other SSES cost elements beyond direct labor, such as fringe benefits and overhead. AR, Tab 25, SSA Briefing Charts, at 3418, 3420.

the understanding the requirements (UR4) subfactor. See AR, Tab 14, SSES MS Proposal, at 2373-75. In addition, SSES also included the substantiating information detailing its proposed innovations and efficiencies in its cost proposal. See AR, Tab 15, SSES Cost Proposal, at 2434-36. As explained above, the cost adjustment was made solely because of the significant weakness under the staffing element of the management approach (MA2) subfactor. According to SSES, because the record does not contain any documented consideration of SSES's innovations and efficiencies prior to the cost adjustment, the cost realism adjustment is unreasonable. We find this allegation to be meritorious.

When an agency evaluates a proposal for the award of a cost-reimbursement contract, an offeror's proposed estimated costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. FAR §§ 15.305(a)(1); 15.404-1(d); Palmetto GBA, LLC, B-298962, B-298962.2, Jan. 16, 2007, 2007 CPD ¶ 25 at 7. Consequently, the agency must perform a cost realism analysis to determine the extent to which an offeror's proposed costs are realistic for the work to be performed. FAR § 15.404-1(d)(1). An agency is not required to conduct an in-depth cost analysis, see FAR § 15.404-1(c), or to verify each and every item in assessing cost realism; rather, the evaluation requires the exercise of informed judgment by the contracting agency. Cascade Gen., Inc., B-283872, Jan. 18, 2000, 2000 CPD ¶ 14 at 8. Further, an agency's cost realism analysis need not achieve scientific certainty; rather, the methodology employed must be reasonably adequate and provide some measure of confidence that the rates proposed are reasonable and realistic in view of other cost information reasonably available to the agency as of the time of its evaluation. See SGT, Inc., B-294722.4, July 28, 2005, 2005 CPD ¶ 151 at 7. Our review of an agency's cost realism evaluation is limited to determining whether the cost analysis is reasonably based and not arbitrary. Jacobs COGEMA, LLC, B-290125.2, B-290125.3, Dec. 18, 2002, 2003 CPD ¶ 16 at 26.

Here, we find the cost committee's decision to straight-line SSES's proposed WYE level not to be fully supported, and consequently unreasonable, given the lack of any contemporaneous consideration of the protester's substantiating information. As an initial point, we agree with the agency that the solicitation contemplated that a "lack of resource realism" could adversely impact the mission suitability findings and scores and could result in cost realism adjustments. See RFP at 0931. Our concern, however, is with the fact that the adjustment appears to have been based solely on the SEB's finding under one element of one subfactor (i.e., MA2), and failed to take into account the entirety of SSES's proposal with respect to its proposed reduction in WYEs (i.e., UR4).

More specifically, SSES documented in detail numerous contract management innovations, technical performance improvements, and staffing strategies in support of its proposed staffing levels. See AR, Tab 14, SSES MS Proposal, at 2373-75. For instance, it proposed using the [DELETED] for [DELETED] functions, which it stated would reduce GEARS [DELETED] staff by at least [DELETED] WYEs. Id. at 2373. Citing its use on other NASA projects, SSES also described how its use of [DELETED]



would lead to staff savings of [DELETED] percent, [DELETED] percent or [DELETED] percent (depending on the year of performance). Id. at 2374. SSES further explained how its use of [DELETED] development techniques would result in a [DELETED] percent reduction in staffing for the total contract, one third of which would be achieved in each of years 2 through 4. Id. Indeed, SSES described seven different innovations or efficiencies, with explanations about when the strategy would be implemented, the cost to the government, and the benefits to GRC in terms of staff savings.

In this respect, contrary to the evaluation conclusions that SSES's staffing reductions were "unsubstantiated," and based solely on SSES's suggestion to "do more with less," the protester, in fact, included detailed information to support its staffing strategy.<sup>25</sup> To the extent the evaluators had concerns with SSES's explanations, those concerns were not documented in the evaluation record.<sup>26</sup> Indeed, the evaluation record is silent with respect to SSES's proposed innovations and efficiencies.<sup>27</sup> Thus, based on the limited contemporaneous record, it appears that the SEB failed to take into account the supporting information SSES included to justify its reduction in WYEs. Consequently, we find unreasonable the cost committee's decision to upwardly adjust SSES's proposed staffing and the resulting increase in direct labor costs. See, e.g., TriCenturion, Inc.; SafeGuard Servs., LLC, B-406032 et al., Jan. 25, 2012, 2012 CPD ¶ 52 at 12 (sustaining protest where record did not support that agency meaningfully considered offerors' unique technical approaches as part of cost realism analysis).

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<sup>25</sup> We note that SSES discussed generally two of its proposed innovations in the MA2 section of its proposal. See AR, Tab 14, SSES MS Proposal, at 2338. These brief mentions, however, were in the context of cost saving strategies and did not discuss the anticipated resulting staff reductions or provide the level of detail articulated in SSES's UR4 discussion.

<sup>26</sup> As a final note in a supplemental declaration, the contracting officer represents for the first time that the SEB considered the "applicable information" in the UR4 part of SSES's proposal as part of its assessment under the MA2 evaluation element. Supp. COS (SSES) at 7. In light of the lack of any contemporaneous support for the contracting officer's assertion, and considering that this evaluation methodology would appear to be at odds with what was contemplated under the solicitation and the entirety of the evaluation report, we find this explanation unpersuasive.

<sup>27</sup> Under the innovations and efficiencies element of the understanding the requirements subfactor--at issue here--the SEB assigned SSES's proposal a strength due to the firm's [DELETED] option and [DELETED] approach. AR, Tab 25, SSA Briefing Charts, at 3338. Per SSES's proposal, neither of these features affected staffing levels. See AR, Tab 14, SSES MS Proposal, at 2374-75. No other features of SSES's proposal under the UR4 element were mentioned in the SEB briefing.

## TVS's Cost Realism Challenges

TVS also protests NASA's cost realism analysis, specifically objecting to upward adjustments to its proposal under the following five cost elements: overhead, other direct costs (ODCs), subcontractor labor, general and administrative (G&A) expenses, and award fee. See TVS Protest at 21-28. We have considered each of TVS's concerns and find that none provides an independent basis to sustain the protest.<sup>28</sup>

As an illustrative example, we address TVS's complaints surrounding its proposed minor subcontractor labor.<sup>29</sup> In the solicitation, NASA estimated 15 WYEs for "minor subcontractor" labor, at a rate of \$117.58.<sup>30</sup> RFP at 0914. In its proposal, TVS acknowledged that the minor subcontractor labor on the predecessor GESS-3 effort included subcontracted technical specialists with "advanced skillsets" in "unique, specialized" areas such as chemical propulsion testing, radioisotope power systems, intelligent control systems, complex structural systems, loads/dynamics, and aeroacoustics simulation. AR, Tab 13, TVS Cost Proposal, at 1468-69. According to

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<sup>28</sup> With respect to the adjustments to TVS's G&A and award fee, the agency admits error. Under the G&A cost element, the cost committee made a [DELETED] percent adjustment to TVS's G&A rate, thus adding to TVS's G&A costs; but, the committee failed to account for the other upward adjustments that increased TVS's G&A base. See TVS Comments/Supp. Protest at 26-28. The agency acknowledges this error, which resulted in an improper upward adjustment of \$710,446. Supp. COS (TVS) at 9. As for the award fee adjustment, the agency explains that the cost templates for all offerors "inadvertently" automatically adjusted proposed award fees as a result of other cost adjustments, which was contrary to the RFP. Supp. MOL (TVS) at 12; see RFP at 0932 (providing that fixed fee dollars will not be adjusted in the probable cost adjustment). The result was an improper net upward adjustment of \$1,101,042 to TVS's proposal. AR, Tab 25, SSA Briefing Charts, at 3428, 3431.

Under the circumstances here, where TVS's proposal already had a more than \$29 million probable cost advantage over HX5's proposal, the combined \$1,811,488 error is not sufficiently prejudicial to provide an independent basis to sustain TVS's protest. See Ball Aerospace & Techs. Corp., B-402148, Jan. 25, 2010, 2010 CPD ¶ 37 at 6 (finding protester was not prejudiced by errors in agency's price evaluation). Nevertheless, the agency may want to correct these errors, and any others, prior to performing a new cost/technical tradeoff, as recommended herein.

<sup>29</sup> The RFP defined a minor subcontractor as a subcontractor that had a contract value of less than 15 percent of the total contract value for any year of performance. RFP at 0913.

<sup>30</sup> The RFP instructed offerors that the estimates were for "informational purposes only" and that offerors were to "propose the staffing level deemed adequate for complete and efficient performance of the contract - regardless of the Government's estimate." RFP at 0913.

TVS, these roles were filled on the GESS-3 contract through a mix of specialty subcontractors ([DELETED] WYEs) and labor from [DELETED] ([DELETED] WYEs); TVS proposed a similar solution. Id. at 1469.

As relevant here, TVS proposed [DELETED] WYEs (at a rate of \$[DELETED]) in the first year of performance, and [DELETED] WYEs during the remaining years of performance (with [DELETED] labor rates) for minor subcontractors. Id. at 1469, 1477, 1754, 1741-44. In explaining the staff reduction, TVS stated in its proposal simply that it “evaluated the historical work content and skills provided by GESS-3 subcontractors” and determined that [DELETED] percent of the work could be “transitioned to and performed by our GEARS direct staff.” Id. at 1469. TVS specifically proposed to replace the [DELETED] minor subcontractors with the following [DELETED] labor categories from its direct labor pool: [DELETED]. Id. at 1469, 1733 (year 2 rates for the positions).

With respect to the other [DELETED] WYEs, TVS proposed to utilize labor from [DELETED], as it represented had been done on the GESS-3 contract. Id. at 1469. TVS identified these WYEs under the following labor categories (and respective rates) in its direct labor pool: [DELETED].<sup>31</sup> Id. at 1469, 1741 (year 1 rates for the positions); see also AR, Tab 20, TVS Clarification, at 3243 (TVS confirming its replacement for the [DELETED] WYE minor subcontractors).

In considering TVS’s proposed labor mix and rates, the cost committee contemporaneously documented that TVS had proposed to replace “specialized subcontractors with [DELETED] labor categories.” AR, Tab 25, SSA Briefing Charts, at 3452. Specifically, the cost committee noted that the SEB determined that the 15 minor subcontractors on the incumbent contract were “specialized engineers” that could not be replaced with “[DELETED].” Id. at 3449. Consequently, the cost committee made two related adjustments to TVS’s proposal.

First, the cost committee removed from TVS’s direct labor pool both the [DELETED] WYEs that TVS had transferred from minor subcontractor labor to its own labor pool (for years 2-7), as well as the [DELETED] WYEs from [DELETED] labor. Id. at 3428-30, 3449. Removing these WYEs resulted in a decrease of \$4,509,976 in TVS’s direct labor.<sup>32</sup> AR, Tab 23, Cost Analysis Charts, at 3265. Then, the cost committee added

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<sup>31</sup> TVS’s proposal contemplated the use of [DELETED], but specifically identified the above referenced WYEs in its cost narrative as fulfilling part of the 15 WYE minor subcontractor estimate from the RFP. AR, Tab 13, TVS Cost Proposal, at 1469, 1754. In addition, the TVS’s proposed rates for the [DELETED] mirrored the RFP estimates for the [DELETED] categories identified. See RFP at 0914. Notably, TVS proposed [DELETED] for the same [DELETED] labor categories when the labor was coming from its own direct labor pool. See id. at 1733, 1737; see also, infra, at note 35.

<sup>32</sup> Separately, the cost committee increased TVS’s proposed labor rates for [DELETED], which, coupled with removing the WYEs, resulted in a net increase of \$4,634,648 in  
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these WYEs ([DELETED] WYEs in year 1, [DELETED] WYEs in years 2-7) to the subcontractor cost element at the RFP's minor subcontractor rate. AR, Tab 25, SSA Briefing Charts, at 3452. This resulted in an increase of \$12,011,955 in TVS's subcontractor costs. AR, Tab 23, Cost Analysis Charts, at 3266. Thus, the net impact of the cost committee's adjustments with respect to TVS's minor subcontractor labor was an upward adjustment of \$7,501,979. See id. at 3265-66.

Here, we have no basis to object to the cost committee's adjustments to TVS's minor subcontractor labor. The contracting officer explains that the 15 WYEs were among the "most unique and qualified participants" on GRC's projects.<sup>33</sup> Supp. COS (TVS) at 7. Indeed, TVS recognized in its proposal the "essential" "advanced skillsets" being fulfilled with minor subcontractor labor, as well as the relatively high labor rate for these WYEs.<sup>34</sup> See AR, Tab 13, TVS Cost Proposal, at 1469, 1741. In this respect, TVS acknowledged that "some specialized research and engineering services [would be] best procured via subcontracts." Id. at 1468. The firm also concluded that the agency's staffing estimates were "in line with current staffing requirements" and that "no specific contract-wide tasking [was] available to identify any legitimate areas to reduce or increase the WYE estimate." Id. at 1466.

Nevertheless, based solely on its evaluation of the "historical work content and skills provided by GESS-3 subcontractors," the protester made the business decision to reduce the minor subcontractor support and rely on its own, [DELETED] labor for [DELETED] of these WYEs (in years 2-7). See id. at 1469, 1733. Significantly, TVS did not provide any additional context or explanation as to why NASA's estimate of a \$117.58 rate for these "unique, specialized" positions could be fulfilled with its own labor at rates of \$[DELETED]. See id. at 1468, 1733. On this record, where the agency sufficiently documented its concerns, we find reasonable the cost committee's decision to increase TVS's minor subcontractor labor pool with respect to these [DELETED] WYEs.

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direct labor. AR, Tab 23, Cost Analysis Charts, at 3265; Tab 25, SSA Briefing Charts, at 3428, 3449.

<sup>33</sup> While we accord greater weight to contemporaneous evaluations materials as opposed to judgments made in response to protest contentions, post-protest explanations that provide a detailed rationale for contemporaneous conclusions, and simply fill in previously unrecorded details, will generally be considered in our review of the rationality of an agency's evaluation--so long as those explanations are credible and consistent with the contemporaneous record. See MicroTechnologies, LLC, B-413091, B-413091.2, Aug. 11, 2016, 2016 CPD ¶ 219 at 5.

<sup>34</sup> At \$117.58, the minor subcontractor labor rate was the second highest of the 20 labor categories identified in the RFP. RFP at 0914.

In addition, with respect to the [DELETED] labor, TVS only explained in its proposal that it intended to fulfill these WYEs through its [DELETED] with which it had “[DELETED].” Id. at 1469. The contracting officer maintains that the SEB found “no substantive details that gave credence [to] TVS’s claim to have ‘[DELETED]’ for the [DELETED].” Supp. COS (TVS) at 6. Moreover, the contracting officer highlights that TVS failed to indicate which [DELETED] would be supplying the labor or what qualifications the subcontracted employees in these categories would have. Id. at 7. Likewise, TVS’s proposal did not contain any information to indicate that these [DELETED] would be willing to work at “[DELETED].” Id. Consequently, according to the contracting officer, the SEB did not find credible TVS’s approach to acquire these “[DELETED]” via the firm’s [DELETED] at a “[DELETED].”<sup>35</sup> Id.

Ultimately, we note that TVS’s proposed net labor hours remained unchanged; the relevant cost adjustment was a consequence of increasing the labor rates for the WYEs at issue only. In addition, the record reflects that the minor subcontractor labor was the “most unique and qualified participants on GRC’s projects,” Supp. COS (TVS) at 7, made up of “technical specialists” with “advanced skillsets.” AR, Tab 13, TVS Cost Proposal, at 1469. Indeed, NASA estimated these positions warranted the second highest labor rate. See RFP at 0914. Nevertheless, without sufficient justification or substantiation, TVS proposed to utilize [DELETED] labor for at least [DELETED] WYEs in the first year of performance and [DELETED] WYEs in each subsequent year. See, supra, at note 35. On this record, we find unobjectionable NASA’s cost adjustments to TVS’s proposal with respect to subcontractor labor.

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<sup>35</sup> We note, for the record, that the contracting officer is mistaken in his understanding that the labor rates TVS proposed for the [DELETED] labor, under the [DELETED] labor categories, were “[DELETED].” See Supp. COS (TVS) at 7. In this respect, TVS expressly proposed “[DELETED].” AR, Tab 13, TVS Cost Proposal, at 1465. More specifically, while the firm proposed rates [DELETED]--which the cost committee upwardly adjusted--TVS’s proposed rates for the [DELETED] mirrored those in the RFP. Compare id. at 1733, 1737, with 1741. Indeed, at \$[DELETED], TVS’s rate for the [DELETED] ([DELETED] WYEs) was [DELETED] the RFP’s “minor subcontractor” rate of \$117.58. Thus, it appears that the cost adjustment with respect to [DELETED] of the [DELETED] WYEs may have been based on a misreading or misunderstanding of TVS’s proposal; TVS proposed to pay these WYEs [DELETED], i.e., not “[DELETED],” as the cost committee concluded.

Nevertheless, given that the protester did not raise this issue in its protest and considering that the impact of the error cannot be readily quantified, and because the remainder of the subcontractor labor adjustments were unobjectionable, we decline to sustain the protest on this basis. Still, to the extent this mistaken belief permeated the cost realism analysis, the agency may wish to remedy any labor rate errors as part of its reevaluation.

## Source Selection Decision

As an initial point, due to the evaluation errors identified above, the award decision cannot stand. See, e.g., Gemmo Impianti SpA, B-290427, Aug. 9, 2002, 2002 CPD ¶ 146 at 6. In addition, the protesters raise other compelling concerns regarding the source selection decision that should be rectified in a future selection decision. For instance, the protesters cite to the SSA's judgment that HX5's "de minimis" 0.38 percent upward cost adjustment gave her "increased confidence that HX5 understood the actual cost of carrying out its approach to meeting the requirements of the GEARS contract." AR, Tab 26, SSS, at 3485-86. As the protesters point out, that HX5's net cost adjustment was minimal is mere coincidence resulting from a \$29 million downward adjustment for certain cost elements and a \$30.5 million upward adjustment for other cost elements that "canceled each other out." See SSES Comments/Supp. Protest at 31. Indeed, HX5's \$59.562 million of total adjustments--an absolute value not documented or acknowledged in the selection decision--was the third highest level of total adjustments here. This level was nearly the same as for SSES and more than double TVS's total adjustments. Id. at 32. Thus, to the extent the SSA made any source selection judgments based on the net adjustments to HX5's proposal, such reliance on the delta between proposed costs and probable costs, without further exploration, was not reasonable.

## Prejudice

As discussed above, the record shows that the agency's evaluation of proposals and selection decision was flawed in various respects. 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. See, e.g., Raytheon Co., B-409651, B-409651.2, July 9, 2014, 2014 CPD ¶ 207 at 17. There is no basis for our Office to know what the ultimate source selection might have been, had the evaluation errors discussed above not occurred. In such circumstances, we resolve doubts regarding prejudice in favor of a protester since 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. Accordingly, we conclude that SSES has established the requisite competitive prejudice to prevail in a bid protest.

## RECOMMENDATION

We recommend that NASA reevaluate the offerors' relevant experience and past performance proposals, giving meaningful consideration to contract scope and adequately documenting the rationale for its ratings. We further recommend that the agency revisit its cost realism analysis to ensure that all cost adjustments are supported and without error. The agency should then perform a new cost/technical tradeoff. If, upon reevaluation of proposals, another offeror's proposal is found to offer the best

value to the government, NASA should terminate HX5's contract for the convenience of the government and make award to that other firm.

We also recommend that SSES be reimbursed the costs of filing and pursuing its protest, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1). SSES should submit its certified claims for costs directly to the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

TVS's protest is denied, and SSES's protest is sustained in part and denied in part.

Thomas H. Armstrong  
General Counsel