



**DOCUMENT FOR PUBLIC RELEASE**

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

# Decision

**Matter of:** Enterprise Services, LLC

**File:** B-417329; B-417329.2; B-417329.3

**Date:** May 30, 2019

---

Daniel R. Forman, Esq., Jonathan M. Baker, Esq., Christian N. Curran, Esq., James Peyster, Esq., Puja Satiani, Esq., Nkechi Kanu, Esq., and Lauren H. Williams, Esq., Crowell & Moring LLP, for the protester.  
James J. McCullough, Esq., Michael J. Anstett, Esq., Anayansi Rodriguez, Esq., and Katherine L. St. Romain, Esq., Fried, Frank, Harris, Shriver & Jacobson LLP, for Leidos, Inc., the intervenor.  
Victoria H. Kauffman, Esq., Grant L. Arnold, Esq., Brian M. Stanford, Esq., and Troy D. Taylor, Esq., National Aeronautics and Space Administration, for the agency.  
Jonathan L. Kang, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

## DIGEST

1. Protest that the awardee had disqualifying organizational conflicts of interests (OCI) is denied where the agency waived the alleged conflicts, the waiver was consistent with the requirements of the Federal Acquisition Regulation, and denied where the agency's post-award exchanges with the awardee regarding its OCI mitigation plan do not constitute improper discussions.
2. Protest challenging the evaluation of the offerors' technical proposals is denied where, despite certain flaws in the evaluation, there is no basis to conclude that the agency improperly assigned higher ratings to the awardee's proposal.
3. Protest that the agency evaluated offerors' prices on an unequal basis is denied where the record does not show that the agency should have understood that offerors' prices were based on differing assumptions.
4. Protest challenging the evaluation of offerors' past performance is denied where, despite a lack of documentation for the evaluation of one of the awardee's references, there is no basis to conclude that the protester was prejudiced by the evaluation.

---

## DECISION

Enterprise Services, LLC, of Herndon, Virginia, protests the award of a contract to Leidos, Inc., of Reston, Virginia, by the National Aeronautics and Space Administration (NASA), under request for proposals (RFP) No. 80NSSC18R0002, which was issued for end-user technology support services. Enterprise argues that NASA should have found Leidos' proposal ineligible for award based on organizational conflicts of interest (OCIs), and also argues that the agency unreasonably evaluated the protester's and intervenor's proposals under the technical, price, and past performance factors.

We deny the protest.

## BACKGROUND

NASA issued the RFP on February 1, 2018, seeking proposals for the NASA End-user Services and Technologies (NEST) contract. Agency Report (AR), Tab 1a, RFP, at 1.<sup>1</sup> The NEST contract will support NASA's End-user Services Program Office, which "oversees the portfolio of services and capabilities associated with the end-user services domain; this includes defining and executing overall strategy, roadmaps, standards, policies, investments, and projects." AR, Tab 1c, Performance Work Statement (PWS), at 5. The contractor will be required to meet the following requirements:

[Provide] all resources to acquire, provide, install, test, manage, plan, design, integrate, upgrade, operate, secure, and maintain all NASA-approved hardware and software in support of NASA's End User Computing hardware, Agency standard software suite, mobile [information technology (IT)] services, printers and multi-functional devices (MFDs), NASA service catalog of IT services and accessories, Tier 2 and 3 support, priority services (VIP), enhanced support services, and supporting infrastructure for all services as delineated in the NEST [PWS].

Id. at 7.

The NEST contract will encompass and expand upon the services provided under the incumbent Agency Consolidated End-user Services (ACES) contract, which is currently being performed by Enterprise.<sup>2</sup> COS at 2. In this regard, the RFP stated that the

---

<sup>1</sup> References to the RFP are to the portions provided in tabs 1a-1i of the agency report.

<sup>2</sup> The ACES contract was awarded to HP Enterprise Services, LLC on December 27, 2010. Contracting Officer's Statement (COS) at 2 n.1. In 2016, HP Enterprise Services, LLC changed its name to Enterprise Services, LLC. Protester's Response to GAO Questions, May 14, 2019, at 1. In 2017, Enterprise Services, LLC combined with Computer Sciences Corporation under a new corporate parent, DXC Technology

(continued...)

agency viewed NEST as a “transformational contract,” that “seeks to achieve the goals of supporting the NASA workforce in a device-agnostic, mobile friendly environment with built-in security and cloud-based resources.” PWS at 5.

The solicitation anticipated the award of an indefinite-delivery, indefinite-quantity contract with a maximum ordering value of \$2.91 billion. RFP, Model Contract, at 15. The RFP provides for a base period of 2 years and three months, a 2-year option period, a 1-year option period, and five 1-year award term options, which may be exercised based on the contractor’s achievement of performance goals. Id. at 21.

The RFP advised offerors that proposals would be evaluated on the basis of three factors: (1) mission suitability, (2) past performance, and (3) price. RFP at IV-3. Under the mission suitability factor, proposals were to be assigned up to 1,000 points, based on the evaluation of three subfactors: (1) technical approach (400 points), (2) management approach (500 points), and small business utilization (100 points). Id. at IV-5. For purposes of award, the mission suitability and past performance factors were “approximately equal in importance,” and when combined, were “significantly more important” than price. Id. at IV-3.

NASA received proposals from four offerors, including Enterprise and Leidos, by the closing date of April 3. AR, Tab 16, Source Evaluation Board (SEB) Report,<sup>3</sup> at 7. The agency evaluated the offerors’ initial proposals, and established a competitive range consisting of Enterprise and Leidos. Id. The agency conducted oral discussions with Leidos on October 9, and with Enterprise on October 10. Id. at 8. The agency requested final proposal revisions (FPRs) from Leidos and Enterprise, which were received on October 29. Id. The SEB’s evaluation of the offerors’ FPRs was as follows:<sup>4</sup>

---

(...continued)

Company (DXC). Id. at 1-2. In 2018, Enterprise Services, LLC and other subsidiaries of DXC were combined with Vencore, Inc. and KeyPoint Government Solutions, Inc. to become Perspecta Inc. Id. at 2. On November 1, 2018, Enterprise Services, LLC changed its name to Perspecta Enterprise Solutions LLC. Id. The protester advises that “[Enterprise] has continued as a legal entity under its new name and will perform the contract” if it prevails in this protest and is awarded the contract. Protest at 1 n.1. Although the record refers to the ACES contractor and the protester by various names, we refer to the protester as Enterprise for consistency.

<sup>3</sup> NASA’s agency report provided a briefing to the source selection authority (SSA), which comprised the final evaluation by the SEB. See AR, Tab 16, SEB Report.

<sup>4</sup> For the technical approach and management approach subfactors of the mission suitability factor, the agency assigned offerors’ proposals one of the following ratings: excellent (91-100 percent of available points), very good (71-90 percent of available points), good (51-70 percent of available points), fair (31-50 percent of available points), or poor (0-30 percent of available points). RFP at IV-5. For the past performance

(continued...)

	ENTERPRISE	LEIDOS
<b>Mission Suitability</b>	630 points	840 points
Technical Approach	Good (260 points)	Excellent (392 points)
Management Approach	Good (300 points)	Good (350 points)
Small Business Utilization	Good (70 points)	Excellent (98 points)
<b>Past Performance</b>	High Confidence	Very High Confidence
<b>Price</b>	\$949,101,619	\$925,017,496

AR, Tab 16, SEB Evaluation, at 22-23.

The SSA reviewed and concurred with the SEB’s evaluation of the offerors’ proposals. AR, Tab 17, Source Selection Statement (SSS), at 6. The SSA concluded that “Leidos offer[ed] a superior Mission Suitability proposal, a more advantageous Past Performance level of confidence rating, and the lowest price,” and that “[Enterprise] does not offer any advantages as part of its Mission Suitability and Past Performance proposal that would warrant paying the slight price premium.” *Id.* at 9. Based on these conclusions, the SSA selected Leidos’ proposal for award. *Id.* at 10. NASA provided a debriefing to Enterprise on February 11, 2019, and this protest followed.

## DISCUSSION

Enterprise challenges NASA’s selection of Leidos’ proposal for award based on four primary arguments: (1) the agency failed to reasonably evaluate whether the awardee had disqualifying OCIs; (2) the agency unreasonably and unequally evaluated proposals under the mission suitability factor; (3) the agency failed to evaluate price proposals on an equal basis, and also unreasonably evaluated the awardee’s price proposal; and (4) the agency unreasonably evaluated the offerors’ past performance.<sup>5</sup> For the reasons discussed below, we conclude that although the record supports certain of the protester’s arguments, none of the arguments individually or collectively demonstrate that the protester was prejudiced by the errors in the agency’s evaluation. We therefore find no basis to sustain the protest.

---

(...continued)

factor, the agency assigned one of the following ratings: very high, high, moderate, low, very low, or neutral confidence. *Id.* at IV-10-11.

<sup>5</sup> Enterprise also raises other collateral arguments. Although we do not address every argument, we have reviewed them all and find no basis to sustain the protest. In addition, the protester raised a number of arguments in its initial and supplemental protests, but did not file comments in response to the agency’s substantive responses to those arguments. We consider all such issues abandoned and therefore dismiss them. Bid Protest Regulations, 4 C.F.R. § 21.3(i)(3) (“GAO will dismiss any protest allegation or argument where the agency’s report responds to the allegation or argument, but the protester’s comments fail to address that response.”).

## Admission of Protester's Counsel to the Protective Order

As a preliminary matter, Leidos objected to the admission of protester's counsel, attorneys from the law firm of Crowell & Moring LLP, to the protective order issued by our Office for this protest. Leidos argued that the law firm's representation of Enterprise in this protest gave rise to conflicts with the firm's representation of Leidos in a matter before the Department of Defense Office of the Inspector General, which was cited in Enterprise's protest as a reason why the award to Leidos was improper. Intervenor's Objection, Mar. 1, 2019, at 1-2; see Protest at 79 n.19.<sup>6</sup> The intervenor contends that protester's counsels' actions represented violations of the District of Columbia Rules of Professional Conduct with regard to attorneys taking actions or advancing positions that could be adverse to a client. Letter from Leidos to Crowell & Moring, Feb. 28, 2019, at 2-3. In essence, the intervenor argued that the alleged violations showed an inability to comply with the types of obligations required under our protective order, particularly with regard to the possibility that attorneys from Crowell & Moring could use Leidos' privileged and confidential information against it in connection with the protest. Intervenor's Objection, Mar. 1, 2019, at 1-2.

Counsel for Enterprise responded to the objection, disputing certain of the facts alleged by the intervenor, and also disagreeing with the intervenor's argument that Crowell & Moring's actions violated the District of Columbia Rules of Professional Conduct. Protester's Response to Objections, Mar. 4, 2019, at 1-3. The protester also argued that, in any event, the intervenor's objection concerned a private dispute between the parties that should not affect the admission of outside counsel to the protective order. Id. at 1-2.

We concluded that the intervenor's objection turned on whether Crowell & Moring and the individual attorneys had violated the District of Columbia Rules of Professional Conduct. At the time of the objection, however, the intervenor had not filed a complaint with the District of Columbia Office of Disciplinary Counsel, and thus any potential adjudication by that office on the alleged conduct of the Crowell & Moring attorneys would have been speculative. We advised the parties that our Office does not adjudicate allegations related to attorney rules of professional conduct, and would not deny the applications based on the intervenor's objection. We noted that the Crowell & Moring attorneys appropriately represented in their applications their intent to comply with the terms of our protective order, and therefore admitted them to the order.

## Organizational Conflicts of Interest

Enterprise argues that NASA failed to reasonably evaluate whether Leidos should have been excluded from the competition on the basis of OCIs that arise from its

---

<sup>6</sup> The protester subsequently withdrew the allegation that was the subject of the intervenor's objection.

performance of two other contracts for NASA. Protest at 15-22. The protester also argues that the agency's post-award request for Leidos to modify its OCI mitigation plan constituted discussions, which obligated the agency to reopen discussions with the protester. Protester's Comments, Apr. 22, 2018, at 9-11. After Enterprise filed its protest, the agency waived the OCIs. For the reasons discussed below, we conclude that the agency followed the applicable procedures to waive the OCIs, and also conclude that the post-award exchanges with the awardee did not constitute discussions. We therefore find no basis to sustain the protest.

The Federal Acquisition Regulation (FAR) requires contracting officials to avoid, neutralize, or mitigate potential significant conflicts of interest 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 described in FAR subpart 9.5 and the decisions of our Office, can be categorized into three groups: (1) biased ground rules; (2) unequal access to information; and (3) impaired objectivity. As relevant here, an impaired objectivity OCI arises where a firm's ability to render impartial advice to the government would be undermined by the firm's competing interests. FAR § 9.505(a); Diversified Collection Servs., Inc., B-406958.3, B-406958.4, Jan. 8, 2013, 2013 CPD ¶ 23 at 5-6.

The FAR also provides that an agency may, as an alternative to avoiding, neutralizing, or mitigating an OCI, execute a waiver determining that application of the FAR's OCI provisions in a particular circumstance is not in the government's interest as follows:

The agency head or a designee may waive any general rule or procedure of this subpart by determining that its application in a particular situation would not be in the Government's interest. Any request for waiver must be in writing, shall set forth the extent of the conflict, and requires approval by the agency head or a designee. Agency heads shall not delegate waiver authority below the level of head of a contracting activity.

FAR § 9.503.

Waivers of OCIs must be consistent with the provisions of FAR § 9.503 and reasonably supported by the record. Concurrent Techs. Corp., B-412795.2, B-412795.3, Jan. 17, 2017, 2017 CPD ¶ 25 at 8. While our Office will review an agency's execution of an OCI waiver, our review is limited to consideration of whether the waiver complies with the requirements of the FAR, that is, whether it is in writing, sets forth the extent of the conflict, and is approved by the appropriate individual within the agency. Dell Servs. Fed. Gov't, Inc., B-414461.6, Oct. 12, 2018, 2018 CPD ¶ 374 at 6.

The RFP required an offeror to "assess whether there is an organizational conflict of interest associated with the proposal it submits," and to include in its proposal a mitigation plan to address any such conflicts. RFP at III-32. Leidos and Enterprise each submitted an OCI plan which addressed potential conflicts and mitigation

approaches. The agency reviewed these plans and concluded that neither offeror had any disqualifying OCIs. AR, Tab 21, OCI Determination, Mar. 21, 2019, at 1.

The protester primarily argues that Leidos has impaired objectivity OCIs arising from two contracts Leidos currently performs for NASA: (1) the Safety, Health, and Mission Assurance (SHeMA-2) contract, and (2) the Research, Engineering, and Mission Integration Services (REMIS) contract. The protester argues that as the NEST contractor, Leidos will be required to provide end-user support for its employees on the SHeMA-2 and REMIS contracts, thereby creating conflicts in the prioritization of work requests under NEST, as well as conflicts in the evaluation of the awardee's performance of its work under NEST by its own employees through feedback surveys.

In response to the protester's arguments, the contracting officer reviewed the record and concluded that there were no significant, unmitigated OCIs. See AR, Tab 21, OCI Determination, Mar. 21, 2019; AR, Tab 21, Supp. OCI Determination, Apr. 12, 2019. The agency's analysis relied, in part, on post-award exchanges with Leidos that directed the awardee to inform the agency of changes to the work performed under the SHeMA-2 or REMIS contracts that could affect the work that might be required of Leidos under the NEST contract. AR, Tab 21, Supp. OCI Determination, Apr. 12, 2019, at 4.

Nonetheless, the contracting officer requested that the NASA assistant administrator for procurement<sup>7</sup> approve a waiver of the application of the OCI provisions of FAR subpart 9.5 to the award to Leidos on May 17. OCI Waiver, May 17, 2019, at 12. On May 20, 10 days before the 100-day deadline for our Office to resolve the protest under the Competition in Contracting Act, 31 U.S.C. § 3554(a)(1), NASA advised our Office that it had waived that application of the OCI provisions of FAR subpart 9.5 to this procurement. We conclude that the waiver was made in accordance with the requirements of FAR § 9.503, in that it was signed by the appropriate individual, set forth all of the protester's allegations, and concluded that it was in the government's interest to waive the application of the OCI provisions of FAR subpart 9.5 with regard to any "residual impaired objectivity-type OCIs [that] may be present with respect to the SHeMA-2 or REMIS contracts. . . ." Id. at 12. As a result, we deny the OCI allegations covered by the agency's waiver.

#### Modification of OCI Plan

Notwithstanding the OCI waiver, Enterprise also argues that NASA's request that Leidos modify its OCI mitigation plan after award was improper, because this post-award action constituted unequal discussions. The protester contends that the agency's request demonstrates that Leidos' OCI plan, as submitted, was not acceptable

---

<sup>7</sup> The OCI waiver states that this individual is the NASA Administrator's "designated approval authority for OCI waivers pursuant to NASA FAR Supplement (NFS) 1809.503)." OCI Waiver, May 17, 2019, at 12.

and required revision, and that but for the post-award exchanges, the plan would have remained unacceptable. The protester further contends that because the agency allowed the awardee to revise its OCI plan, it was required to reopen discussions with Enterprise. We find no merit to this argument.<sup>8</sup>

Where an agency engages in discussions with an offeror, it must afford all offerors remaining in the competition an opportunity to engage in meaningful discussions. FAR § 15.306(d)(1); Presidio Networked Solutions, Inc., et al., B-408128.33 et al., Oct. 31, 2014, 2014 CPD ¶ 316 at 8. Our Office has explained, however, that agencies may conduct exchanges with offerors regarding OCIs without triggering the obligation to conduct discussions with all offerors. See Cahaba Safeguard Adm'rs, LLC, B-401842.2, Jan. 25, 2010, 2010 CPD ¶ 39; C2C Solutions, Inc.; TrustSolutions, LLC, B-401106.6, B-401106.7, June 21, 2010, 2010 CPD ¶ 145; Overlook Sys. Techs., Inc., B-298099.4, B-298099.5, Nov. 28, 2006, 2006 CPD ¶ 185. In this regard, the FAR states as follows:

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

FAR § 9.504(e). Our Office explained in Overlook Systems Technologies that this FAR provision contemplates a review of the apparent successful offeror for potential OCIs, as well as exchanges with that offeror to address any such concerns. Overlook Sys. Techs., Inc., supra, at 20. This provision, however, does not describe such exchanges as discussions or contemplate reopening discussions with all offerors. See id.

In Cahaba Safeguard Administrators, for example, the RFP required offerors to include in their proposals a written statement identifying actual or potential OCIs as well as proposing mitigation for such conflicts, and advised that an offeror would be eligible for award only if the agency found its OCI statement acceptable. Cahaba Safeguard Adm'rs, LLC, supra, at 3. We concluded that the agency's exchanges with the awardee regarding its OCI plan did not constitute discussions, as they only addressed issues relating to conflicts and did not result in material changes to the awardee's technical approach or price. Id. at 9-10.

Here, Enterprise argues that the agency should not have allowed Leidos to revise its OCI plan because the RFP required an acceptable OCI plan as a precondition to award.

---

<sup>8</sup> Because we conclude that the agency's post-award exchanges with Leidos do not constitute discussions, we need not address at this time whether the execution of an OCI waiver also waives an allegation regarding the acceptability of an OCI mitigation plan required by a solicitation.



Protester's Comments on GAO Questions, May 7, 2019, at 2-3. The protester, however, does not reasonably explain how the agency's actions were inconsistent with the process outlined in FAR § 9.504(e). The protester also does not reasonably explain why the RFP's requirement for an OCI plan differs from the requirements in Cahaba Safeguard Administrators--which also required an acceptable OCI plan--in a manner that would render NASA's exchanges with Leidos improper post-award discussions. See Cahaba Safeguard Adm'rs, LLC, supra, at 3. Further, the protester does not specifically allege that the agency's exchanges with Leidos resulted in material changes to the awardee's technical approach or price. For these reasons, we find no basis to conclude that the exchanges with the awardee were discussions that obligated the agency to reopen discussions with the protester, or were otherwise improper.

### Mission Suitability Factor Evaluation

Enterprise argues that NASA unreasonably evaluated proposals under the mission suitability evaluation factor. Specifically, the protester argues that the agency: (1) failed to reasonably evaluate the technical acceptability of the awardee's proposal with regard to its proposed equipment; (2) evaluated the proposals in an unequal manner with regard to strengths assigned to Leidos' proposal; (3) failed to assign additional strengths to the protester's proposal, and (4) unreasonably assigned five weaknesses to the protester's proposal. Protest at 23-63. For the reasons discussed below, we agree with the protester that the agency unreasonably evaluated certain areas of the proposals; we conclude, however, that none of these errors prejudiced the protester.

The evaluation of an offeror's proposal is a matter within the agency's discretion. National Gov't Servs., Inc., B-401063.2 et al., Jan. 30, 2012, 2012 CPD ¶ 59 at 5. In reviewing protests challenging an agency's evaluation of proposals, our Office does not reevaluate proposals or substitute our judgment for that of the agency, but rather examines the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. MicroTechnologies, LLC, B-413091, B-413091.2, Aug. 11, 2016, 2016 CPD ¶ 219 at 4-5. Agencies 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. A protester's disagreement with the agency's judgment in its determination of the relative merit of competing proposals, without more, does not establish that the evaluation was unreasonable. Veterans Evaluation Servs., Inc., et al., B-412940 et al., July 13, 2016, 2016 CPD ¶ 185 at 9-10. Competitive prejudice is an essential element of a viable protest, and we will sustain a protest only where the protester demonstrates that, but for the agency's improper actions, it would have had a substantial chance of receiving the award. DRS ICAS, LLC, B-401852.4, B-401852.5, Sept. 8, 2010, 2010 CPD ¶ 261 at 21.

The protester's challenges concern the technical approach and management approach subfactors under the mission suitability evaluation factor. For the technical approach subfactor, the agency assigned Leidos' proposal four significant strengths, 22 strengths,

and no weaknesses, significant weaknesses, or deficiencies; for the management approach subfactor, the agency assigned no significant strengths, 17 strengths, and no weaknesses, significant weaknesses, or deficiencies. AR, Tab 16, SEB Report, at 22-23. For the technical approach subfactor, the agency assigned Enterprise's proposal no significant strengths, 10 strengths, two weaknesses, and no significant weaknesses or deficiencies; for the management approach subfactor, the agency assigned no significant strengths, six strengths, three weaknesses, and no significant weaknesses or deficiencies. Id.

### Evaluation of Leidos' Proposed Equipment

First, Enterprise argues that Leidos' proposal took exception to a material requirement to propose hardware that met standards specified in the RFP. Protester's Comments, Apr. 1, 2019, at 13-19. The technical approach subfactor stated that the agency would evaluate offerors' "overall understanding and approach to, along with proposed techniques and procedures for executing each of the PWS elements as demonstrated by the completeness, overall efficiency and consistency of all parts of the proposal." RFP at IV-6. The PWS included a requirement to provide hardware that meets or exceeds the standards in NASA technical document STD-2805x. See PWS at 45. This document addressed configurations for hardware such as desktop computer systems, external displays, docking stations, communications handsets, and mobile devices. AR, Tab 27, NASA STD-2805x (Spring 2018). As the agency explains, the STD-2805x document addresses 53 hardware configurations, each of which included up to 19 individual components, each of which in turn contained up to five specifications. Supp. Memorandum of Law (MOL) at 8; Supp. COS at 3.

Enterprise argues that NASA's evaluation failed to identify three items in Leidos' proposal that failed to meet the specifications in document STD-2805x: a mobile engineering workstation with a 17-inch screen, a rugged cell phone, and a headset. Protester's Comments, Apr. 1, 2019, at 15-16. The protester contends that the agency should have assigned Leidos' proposal a deficiency under the technical approach subfactor for proposing these items, and that the awardee's evaluation for this subfactor should have been reduced from 392 points to no more than 120 points. Id. at 17.

Clearly stated requirements within a solicitation are considered to be material to the needs of the government, and a proposal that fails to conform to the solicitation's material terms and conditions must be considered unacceptable and may not form the basis for award. ARBEiT, LLC, B-411049, Apr. 27, 2015, 2015 CPD ¶ 146 at 4. As with other aspects of an evaluation, agencies have discretion to assess whether a failure meets the standard of materiality set forth in a solicitation, and our Office will not substitute our judgment for the agency's unless the record shows that the agency has acted unreasonably. See Level 3 Commc'ns LLC, B-412854 et al., June 21, 2016, 2016 CPD ¶ 171 at 11.

The RFP defined a deficiency as follows: "A material failure of a proposal to meet a Government requirement or a combination of significant weaknesses in a proposal that

increases the risk of unsuccessful contract performance to an unacceptable level.” RFP at IV-4. In contrast, the RFP defined a weakness as follows: “A flaw in the proposal that increases the risk of unsuccessful contract performance.” Id.

NASA does not dispute the protester’s argument that the three items listed in Leidos’ proposal fail to meet the requirements of document STD-2805x, or that the agency failed to identify them during the evaluation. The agency argues, however, that this issue was not a “material failure” and therefore would merit, at best, the assessment of a weakness, rather than a deficiency. Supp. MOL at 9-10. In support of its argument, the agency notes that it viewed a similar failure by the protester to be a weakness, rather than a deficiency. In this regard, during discussions, the agency advised the protester that nine of its proposed items failed to meet the requirements of document STD-2805x. AR, Tab 11b, Enterprise Discussions, at 106. The agency stated that these nine items, collectively, merited a weakness. Id. The protester responded by proposing compliant items, and the agency agreed that this resolved the weakness. Id. at 107-08. For these reasons, the agency contends that Leidos’ proposal of three non-compliant items should not be considered a deficiency because it was a “minor” issue that would not increase the risk of unsuccessful performance to an unacceptable level. Supp. MOL at 9-10.

Our Office generally considers agencies’ explanations that merely provide a detailed rationale for contemporaneous conclusions and fill in previously unrecorded details, so long as the explanations are credible and consistent with the contemporaneous record. Native Energy & Tech., Inc., B-416783 et al., Dec. 13, 2018, 2019 CPD ¶ 89 at 4. In contrast, our Office accords lesser weight to post-hoc arguments or analyses made in response to protest allegations because we are concerned that new judgments made in the heat of an adversarial process may not represent the fair and considered judgment of the agency. Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15.

We agree with the protester that the agency’s position is based on a post-hoc evaluation, to the extent the agency acknowledges that it did not identify this issue or evaluate its materiality prior to award. As the record shows, however, the agency’s argument regarding the materiality of a failure to propose a compliant hardware item is consistent with the contemporaneous record because it assigned a weakness, rather than a deficiency, to Enterprise’s proposal based on a similar failure. See AR, Tab 11b, Enterprise Discussions, at 106. The protester does not reasonably explain why the three non-compliant items in Leidos’ proposal should have been treated differently than the nine in its own proposal which were considered, collectively, to constitute a single non-material weakness, rather than a deficiency. We find no basis to conclude that the agency’s judgment that the proposal of a small number of non-compliant items amounts to a weakness, rather than a deficiency. See Level 3 Commc’ns LLC, supra. We also conclude that the protester was not prejudiced by the agency’s failure to identify the awardee’s failure with regard to the three items, because the assessment of a single additional weakness to the awardee’s proposal could not have reasonably altered the

agency's evaluation of a significant technical advantage for the awardee's proposal under the mission suitability factor.

Enterprise also argues that it was prejudiced because the agency's failure to identify this weakness allowed the awardee to propose non-compliant items at a lower cost. The protester quantifies the cost impact by arguing that the difference between the awardee's non-compliant workstation product and the protester's compliant workstation is \$[DELETED].<sup>9</sup> Protester's Comments, Apr. 1, 2019, at 19. As the agency and intervenor note, however, the protester's arguments do not establish that the difference between the protester's and awardee's price represents the likely cost of providing a compliant item. In this regard, the non-compliance stems from the type of memory to be provided in the workstation, and the protester does not specifically allege that provision of compliant memory would cost \$[DELETED]. See Intervenor's Supp. Comments, Apr. 22, 2019, at 5-6. Additionally, the protester does not represent or contend that it would have lowered its own price by \$[DELETED] had it known that the agency's evaluation would waive or overlook a workstation that did not include compliant memory.

We also find that, even if the protester's argument--that the price impact should be considered \$[DELETED]--had merit, there is no basis to conclude this price difference could affect the award decision, given the protester's overall \$24 million higher price as compared to the awardee. On this record, we find no basis to conclude that the protester could have been prejudiced by this aspect of the evaluation with regard to price.

### Unequal Treatment

Next, Enterprise argues that one of the 22 strengths assigned to Leidos' proposal under the technical approach subfactor should also have been assigned to its proposal. Protester's Comments, Apr. 1, 2019, at 44-45. For example, as relevant here, PWS section 1.2 required offerors to address the following overall "vision" for the NEST contract: "Consistently deliver excellence and provide trusted, readily-available IT services to promote seamless collaboration with internal and external partners for NASA's workforce." PWS at 6. As part of this requirement, offerors were also required to address four goals, and nine objectives for the NEST contract. Id. at 6-7.

The agency concluded that Leidos' proposal merited a strength because its discussion of "use cases" illustrate the experience of a typical NEST end-user. In this regard, the awardee's proposal contained numerous descriptions of hypothetical employees and how they would receive end-user services under various PWS requirements in connection with commonly occurring events. See, e.g., AR, Tab 14a, Leidos FPR, Vol. I, at I-4 (describing a NEST end-user [DELETED]). The agency concluded that the

---

<sup>9</sup> The protester does not contend that the other two non-compliant products gave rise to prejudicial price differences.

description of these use cases provided confidence that the awardee understood the requirements of the PWS, as follows:

The proposal provides day-in-the-life personalized end user use cases representing problems NASA end users encounter and how NEST services address each of these use cases for NEST PWS management and service areas. The value, content, and validity of these use cases demonstrate a thorough understanding of NEST requirements, program goals, and objectives. The proposed approach increases the likelihood that the PWS requirements in this area (PWS 1.2) will be met or exceeded. Thus, this proposal area enhances the potential for successful contract performance.

AR, Tab 16, SEB Report, at 150.

Enterprise argues that its proposal also discussed use case examples, and that the agency unreasonably failed to assign its proposal a similar strength. For example, the protester notes that its proposal addressed a number of use cases that explained the process by which end-users could receive services, such as [DELETED]. AR, Tab 15a, Enterprise FPR, Vol. I, at I-33-I-36.

NASA explains that although the protester's inclusion of use cases satisfied the PWS requirements, the agency did not view them as demonstrating the same level of understanding of the requirements as the use cases set forth in the awardee's proposal. Supp. COS at 8. In essence, the agency found that the awardee's "personalized" description of how hypothetical individuals encountered [DELETED] problems, and how those problems were resolved through the provision of end-user services under the awardee's approach to the NEST requirements, demonstrated the awardee's understanding of the requirements in a manner that merited a strength that the protester's use cases did not. See id.; see also AR, Tab 16, SEB Report, at 150. We conclude that the protester's disagreement with the agency's judgment as to the relative merits of the offerors' use cases does not provide a basis to sustain the protest.

#### Additional Strengths for Enterprise's Proposal

Next, Enterprise argues that NASA failed to assign its proposal a number of additional strengths under the technical approach and management approach subfactors of the mission suitability evaluation factor. Protest at 34-53. Here, the contracting officer states that the agency was aware of the areas of the protester's proposal that it claims should have been assigned strengths, but found in each case that the area met, but did not exceed requirements in a manner that merited a strength. See COS at 39-41, 42-72, 82-99. We address two representative examples below. Although we conclude that the agency's response to part of one of the protester's arguments does not establish that the agency's evaluation was reasonable, we conclude that this issue did not prejudice the protester.

The solicitation here defined significant strengths and strengths as follows:

[Significant strength] A proposal area that greatly enhances the potential for successful performance or contributes significantly toward exceeding the contract requirements in a manner that provides additional value to the Government.

[Strength] A proposal area that enhances the potential for successful performance or contributes toward exceeding the contract requirements in a manner that provides additional value to the Government (this could be associated with a process, technical approach, materials, facilities, etc.).

RFP at IV-4.

We first note that the protester's arguments rely in large part on its contention that the contemporaneous evaluation record fails to explain why the agency did not assign additional strengths to its proposal, and that the agency's responses to the protest are improper post-hoc explanations. See Protester's Comments, Apr. 1, 2019, at 31-43. Arguments that an agency failed to assign a strength to a proposal will almost always, by their nature, require responses from the agency that are not contained in the contemporaneous record because agencies are not required to catalog and document every aspect of an offeror's proposal that meets, but does not exceed the solicitation requirements. See Unispec Enters., Inc., B-407937, B-407937.2, Apr. 16, 2013, 2013 CPD ¶ 104 at 8. Our Office has explained that we will not sustain a protest where an agency reasonably explains that it considered whether the protester's proposal merited additional strengths, but concluded that the aspects of the proposal cited did not exceed the solicitation requirements in a manner consistent with the solicitation criteria. See Avon Protection Sys., Inc., B-411569.2, Nov. 13, 2015, 2016 CPD ¶ 33 at 8.

First, Enterprise argues that NASA failed to assign its proposal a strength or significant strength in connection with its response under the technical approach subfactor regarding PWS ¶ 4.0, which addressed the agency's goal of "supporting the NASA workforce in a device-agnostic, mobile friendly environment with built-in security and cloud based resources." PWS at 18. One of the requirements of this PWS provision stated that the contractor must meet the following requirement:

The new process to be developed during the transition period will require the Contractor to provide ServiceNow-certified developers who will create and maintain all NEST service definitions in an [NASA Shared Services Center (NSSC)] development instance of ServiceNow. NSSC will provision access to the system, and will respond to any system support issues. The NSSC Configuration Management process will govern these changes as they are developed and tested to ensure a working product is in place before any changes are moved into the production environment.

PWS at 21.<sup>10</sup>

Enterprise argues its proposal explained that the protester [DELETED] a proposed subcontractor that is a “ServiceNow Gold Certified Partner,” and that “[DELETED].” Protest at 39-40. The protester contends that the agency therefore reasonably failed to conclude that this aspect of its proposal merited a strength.

The agency states that the protester’s proposal was found to meet the requirements of PWS ¶ 4.0 with regard to its explanations [DELETED] a ServiceNow-certified subcontractor. The agency explains that although the protester’s proposal cited information about the subcontractor’s successful performance of requirements involving its role as a ServiceNow certified firm, the protester did not otherwise provide a detailed explanation as to how the proposed approach exceeded the PWS requirements in a manner that merited a strength. COS at 48-49. We think the agency reasonably found that the protester’s [DELETED] proposed subcontractor did not merit a strength, and conclude that the protester’s disagreement with the agency’s judgment does not provide a basis to sustain the protest.

Second, Enterprise argues that NASA failed to assign its proposal a strength in connection with its response under the management approach subfactor regarding PWS ¶ 2.5, which addressed service level agreements (SLAs) and metrics to assess the contractor’s performance. PWS at 13. The protester contends that it should have received strengths for its proposed approach to developing SLAs and operating level agreements (OLAs). Protest at 35-36.

With regard to SLAs, the protester states that it should have received a strength for proposing a “[DELETED]” to review the protester’s performance. See AR, Tab 15a, Enterprise FPR, Vol. I, at I-239. As with the protester’s other arguments, the agency reasonably explains that the protester’s proposal described an approach to establishing SLAs that met the PWS requirements, but did not provide details that explained how this approach exceed the PWS requirements in a manner that merited a strength. COS at 82.

With regard to the protester’s argument regarding OLAs, the agency contends that it in fact assigned a strength for the protester’s proposed approach to this requirement. COS at 82 (citing AR, Tab 16, SEB Report, at 178). As the protester notes, however, the agency’s response cites a different requirement regarding associate contractor agreements (ACAs) under PWS 2.1. See id. We agree with the protester that the agency’s response regarding ACAs does not address the protester’s argument as it relates to OLAs. We conclude, however, that even if the agency’s response here fails

---

<sup>10</sup> ServiceNow is a company that provides cloud-based software solutions. See ServiceNow Website <https://www.servicenow.com/company.html> (last visited May 20, 2019).

to rebut the protester's allegation that a strength was merited for its approach to establishing OLAs, and even if the protester's proposal merited an additional strength in this area, there is no reasonable basis to conclude that the addition of such a strength could have affected the overall advantage of the awardee's proposal.

#### Assignment of Weaknesses to Enterprise's Proposal

Next, Enterprise argues that NASA unreasonably assigned five weaknesses to its proposal under the mission suitability factor. Protest at 23-34; Protester's Comments, Apr. 1, 2019, at 19-30. We find no merit to these arguments, and address a representative example below.

The agency assigned a weakness to Enterprise's proposal under the management approach subfactor based on an inconsistency in the protester's approach regarding technology refresh services. AR, Tab 16, SEB Report, at 182. The agency noted that the protester's proposal discussed [DELETED]:

[DELETED]

AR, Tab 15a, Enterprise FPR, Vol. I, at B.336. The agency concluded that this description of [DELETED] refresh process was inconsistent with the protester's description of the approach to printer refresh, which requires approval by the agency. AR, Tab 16, SEB Report, at 182. The agency concluded that the "inconsistent communication approaches . . . are lacking in clarity as to whether the communication is automated via timed criteria [that] will require manual approval by NASA before the user communication occurs." Id. Based on this concern, the agency found that "this flaw in the proposal increases the risk of unsuccessful contract performance." Id.

The protester argues that its proposal distinguished between two types of refresh services: (1) end-user refresh services for compute devices (i.e., computers and workstations), which [DELETED], and (2) printer refresh, which [DELETED]. See AR, Tab 15a, Enterprise FPR, Vol. I, at B.336-B.340. For this reason, the protester argues any inconsistency between the two approaches should not have been the subject of a weakness. Protester's Comments, Apr. 1, 2019, at 28-29.

Enterprise's proposal regarding technology refresh, however, concerned all of the areas discussed above: "Our process and approach for refreshing Compute, Mobile, and Print devices." AR, Tab 15a, Enterprise FPR, Vol. I, at B.336. The process and approach for refreshing these technologies was described by the protester as [DELETED]:

[DELETED]

Id.



Despite this characterization, as noted by the agency, the section regarding refresh of print devices states as follows:

Similar to the compute and mobile refresh approach, [DELETED].

Id. at B.339-B.340.

On this record, we think the agency reasonably identified inconsistencies between the protester's general description of the technology refresh process for compute, mobile and print requirements as [DELETED], and the specific printer refresh process as [DELETED] in a manner "[s]imilar to the compute and mobile refresh" approaches. The protester's disagreement with the agency's concerns regarding this matter does not provide a basis to sustain the protest.

In sum, we agree with certain of the protester's arguments regarding the reasonableness of the agency's evaluation of the offerors' proposals under the mission suitability factor. We conclude, however, that none of these evaluations prejudiced the protester. We therefore find no basis to sustain the protest.

#### Price Evaluation

Next, Enterprise argues that NASA unreasonably evaluated proposals under the price factor. Protest at 79-92. The protester contends that the agency's evaluation of proposals for pricing the existing assets in use for the incumbent ACES contract was unreasonable because it was clear from the record that offerors had based their prices on differing assumptions. Id. at 81-84. The protester also argues that the agency unreasonably assigned weaknesses to its price proposal. Id. at 84-92. For the reasons discussed below, we find no basis to sustain the protest.

#### Asset Transition Value (ATV)

Enterprise argues that NASA failed to recognize that the offerors submitted their proposals based on differing pricing assumptions, which gave rise to what the protester characterizes as an improper "apples to oranges" comparison which did not meaningfully permit a comparison of offerors' prices. Protest at 81; Protester's Comments, Apr. 1, 2019, at 65-66. Our Office has explained that agencies must evaluate proposed prices or costs on a common basis and in a manner that permits the assessment of the total cost to the government. Symplicity Corp., B-291902, Apr. 29, 2003, 2003 CPD ¶ 89 at 7; Lockheed Aeronautical Sys. Co., B-252235.2, Aug. 4, 1993, 93-2 CPD ¶ 80 at 7. The protester contends that the agency knew of the issue and should have addressed this matter during discussions to ensure that offerors' proposed prices were relying on common assumptions.

The RFP advised offerors that they could elect one of two options "for provisioning assets (e.g., hardware and software) required to deliver the services delineated in the PWS," as follows: "Option A - Acquisition of assets directly from the incumbent ACES

Contractor,” or “Option B - Delivery of all new assets.” RFP at III-8. The RFP directed offerors to a NASA website which contained the ATV report, which listed equipment and a value for that equipment. Id. As relevant here, for option A, the RFP provided the following instructions:

The Offeror shall purchase the assets (URL: <https://www.nssc.nasa.gov/nest>) during phase-in to ensure services required continue without interruption on the effective date of the contract. On a per asset basis, the maximum residual value shall be no more than the asset transition value per the ACES [Data Requirements Description (DRD)] IT-06 Asset Transition Value Report found on the NEST website. (The most recent update of ACES DRD IT-06 is dated February 1, 2018[]). Those assets include but are not limited to:

1. Computers (e.g., Desktops and Laptops)
2. Cell phones, Smartphones, and Pagers
3. Printers and Multi-function Devices (MFDs)
4. Infrastructure servers, including software, owned by ACES (e.g., domain controllers and automated software update servers)

The Offeror shall inherit and support the remaining time to refresh of each asset acquired.

Id. The RFP further stated that “[r]egardless of the option chosen, the Offeror shall ensure that all services dependent upon the assets . . . continue without interruption.”

Id.

On September 15, 2017, per its requirement under the ACES contract, Enterprise provided NASA the ATV report, which stated that the value of the equipment was \$56.1 million. COS at 108; AR, Tab 20, ACES ATV Report, Sept. 15, 2017, at 3. On February 1, 2018, the day the solicitation was issued, the protester provided an updated version of the ATV report, which stated that the value of the equipment was \$56.2 million. COS at 107; AR, Tab 20, ACES ATV Report, Feb. 1, 2018, at 4. The protester subsequently agreed to allow the agency to post a redacted version of the ATV report to the bidder’s library for the NEST competition. COS at 107. On March 12, the protester contacted the contracting officer to advise that the revised ATV report did not contain a number of items, including “a large number of seat-spares, monitors, docking stations, keyboards, mice, and other end user peripherals.” AR, Tab 20, Email from Enterprise to Contracting Officer, Mar 12, 2018, at 1.

Leidos’ proposal stated that it would choose option A, and purchase the required assets from the incumbent contractor, as follows:

In choosing Option A, we reached out to the incumbent contractor [Enterprise] to negotiate an agreement to purchase the existing ACES assets. Their commitment to support us and NASA in the ACES contract is as follows:

“Thank-you for your query regarding the ACES ATV. Please note that in addition to the ATV items listed in the posted DRD IT-06, within the NASA ACES enterprise environment today we have procured and provide support for a corresponding number of monitors, docking stations, keyboards, and mice; as well as a large seat-spares pool and many other end user peripherals, the value and identification of which is not included within ATV DRD-IT-06. As the ACES incumbent contractor, we are committed to the success of our NASA client. We will continue to fully execute our responsibilities under the ACES contract including the requirements identified within Section 4.5 of Contract NNX11AA01C, at such time as that may become necessary.”

With [Enterprise]’s assurance that they are committed to the success of NASA, we anticipate no problems finalizing the purchase arrangement for the ACES ATV upon contract award.

AR, Tab 14a, Leidos FPR, Vol. I, at 271. Leidos stated that it “anticipates the cost of acquiring ACES incumbent owned assets is \$[DELETED].” AR, Tab 22, Leidos FPR, Vol. III, at 41.

Enterprise’s proposal also stated that it would choose option A, and would transition the leases for the assets from the ACES contract to the NEST contract. AR, Tab 15a, Enterprise FPR, Vol. I, at I-251. The protester further stated the following regarding its approach: “For the NEST program, we will transition all the existing ACES assets to reduce up-front risk in the NEST program, while allowing us to maintain the existing refresh cycle timeline.” Id.

The protester states that, consistent with its proposal to provide “all the existing ACES assets” its “proposed price for the assets it expected to transition was approximately \$[DELETED] more than the total value of all the assets listed under the [ATV report].” Protest at 82; see also Protester’s Comments, Apr. 1, 2019, at 68 n.9 (clarifying that the difference between the protester’s proposed price for the assets and value for the ATV report was \$[DELETED], rather than \$[DELETED] as initially stated in its protest). The protester argues that this additional cost was to address “amounts for computer monitors, docking stations, keyboards, mice, and other similar items--none of which were included on the [ATV] report, but all of which are assets under the incumbent contract that will need to be transitioned in order for the NEST contractor to perform,” i.e., the items it cited in its March 2018 email to the contracting officer. Protest at 82.

As discussed above, the ATV report listed assets that would be transferred from the ACES contract, and specified a value of \$56.2 million for those assets. For option A,

the RFP provided the maximum value of the assets to be acquired from the incumbent “shall be no more than the asset transition value” listed in the report. RFP at III-8. The RFP also stated, however, that “[r]egardless of the option chosen, the Offeror shall ensure that all services dependent upon the assets . . . continue without interruption.” Id. The protester and agency agree that the RFP required offerors to provide all assets necessary to perform the contract requirements, including any assets that are not included in the ATV report. Protester’s Comments, Apr. 1, 2019, at 61; Agency Response to GAO Questions, May 2, at 8. The protester contends that although its price reflected the items not listed on the ATV report, the awardee’s proposal did not. The protester contends, therefore that the offerors’ proposals did not have a common basis for their prices. We conclude the record does not support the protester’s arguments.

First, we agree with NASA that to the extent Enterprise believed that offerors’ proposed prices were based on differing assumptions because the ATV report was incomplete, this was a matter known by the protester prior to the time for receipt of proposals. In this regard, the protester prepared the ATV report, and therefore knew that there were items that it had not included on the list. If the protester believed that the incomplete list would lead other offerors to propose on a different basis, the protester was required to challenge this matter prior to the time for receipt of initial proposals. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1); see AmaTerra Env’tl. Inc., B-408290.2, Oct. 23, 2013, 2013 CPD ¶ 242 at 3. Although the protester raised this matter with the agency on March 12, 2018, after the solicitation was issued, the protester’s correspondence was not an agency-level protest, and the protester did not receive any notice from the agency that the solicitation would be amended to reflect this matter. See AR, Tab 20, Email from Enterprise to Contracting Officer, Mar. 12, 2018, at 1. We therefore find any arguments regarding the completeness of the ATV report to be untimely.

Next, the protester argues that although its proposal stated that it would transition “all the existing ACES assets,” it contends the awardee did not propose to do the same because “Leidos . . . only priced the assets listed in the non-exhaustive NASA provided ATV report.” Protester’s Comments, Apr. 1, 2019, at 61; see also Protest at 83. The record shows, however, that Leidos was aware that there were additional assets from the ACES contract that were not included in the ATV report. As quoted above, the awardee’s proposal expressly states that it had been informed by the protester that there were additional items not included in the ATV report. AR, Tab 14a, Leidos FPR, Vol. I, at 271. The protester therefore does not establish that the offerors had differing assumptions regarding the scope of assets to be transferred from the ACES contract, i.e., that the ATV report comprised all of the assets under the ACES contract.

In addition, with regard to price, the protester does not establish that the protester’s and awardee’s proposed prices for the ATV report put the agency on notice that the offerors’ prices were based on differing assumptions. As discussed above, the RFP provided that the maximum value of the ACES assets listed in the report was the value set forth in that report. RFP at III-8. The RFP, however, did not require offerors to specifically identify a price for the ATV report, or to explain in their proposals what part of their

prices were attributable to the ATV report assets as compared to other assets necessary for performance.

Significantly, the agency notes that the protester's proposal did not explain how the protester priced the assets listed on the ATV report or the assets not listed on the ATV report, or how the protester differentiated between these categories of assets. See Agency Response to GAO Questions, May 2, 2019, at 8. Enterprise contends that the \$[DELETED] difference between the ATV report asset value and the protester's proposed price should have been evident to the agency based on the information provided in its pricing spreadsheet. See Protest at 82 (citing AR, Tab 25, Enterprise FPR Attach. I-10, Tabs P-2C, P-2R). Based on our review of the spreadsheet, we agree with the agency that nothing in the cited portions of the protester's price proposal specifically mention the ATV report, or otherwise explain that the protester had valued the assets to be transferred in a manner that was different than the value of the ATV report.

Similarly, the protester does not point to any part of the awardee's proposal which indicates that Leidos failed to commit to provide all assets required, or that its price did not reflect additional assets required to perform the contract. Although Leidos proposed a price of \$[DELETED] for the ATV report assets, its proposal--as was the case with Enterprise's proposal--did not delineate how it priced additional ACES assets not listed on the ATV report.

In sum, under the terms of the RFP, an offeror's price proposal for the ATV report assets was not required to specifically address items not on the ATV report, and the protester's arguments about the awardee's proposal to purchase the assets listed in the ATV report do not establish that the awardee was unaware of the need to obtain other assets or that the awardee failed to price them.<sup>11</sup> For these reasons, we find no basis in the record to conclude that the agency knew or should have known that the protester had priced its proposal based on assumptions that differed from those relied upon by Leidos. See Lockheed Aeronautical Sys. Co., supra, at 6-7. In any event, the protester does not demonstrate that, even if the awardee should have proposed an additional \$[DELETED] to address what the protester contends is the value of the assets the

---

<sup>11</sup> Enterprise's comments on the agency's response to questions from our Office argues for the first time that the awardee's proposal took exception to the requirement to propose a fixed price. See Protester's Comments on GAO Questions, May 7, 2019, at 14. This argument, however, was raised 47 days after the protester received the awardee's proposal as part of the agency report. The timeliness requirements of our Bid Protest Regulations do not contemplate the piecemeal presentation or development of protest issues. See 4 C.F.R. § 21.2(a)(2) (requiring protest issues be filed within 10 days after the basis is known or should have been known); Lanmark Tech., Inc., B-410214.3, Mar. 20, 2015, 2015 CPD ¶ 139 at 5 n.2 (dismissing piecemeal presentation of protest arguments). We therefore conclude that this argument is untimely.

protester did not disclose in the ATV report, this additional amount could not have resulted in prejudice, as the awardee's price was \$24 million lower than the protester's.

Finally, the protester argues that the agency should have assigned a weakness to Leidos' proposal for proposing a price for the assets in the ATV report of \$[DELETED], as opposed to the \$56.2 million listed in the report. Protester's Comments, Apr. 1, 2019, at 68. As discussed above, offerors were not required to propose a specific price for the ATV report assets. The protester, for example, does not point to a specific part of its proposal where it did so.

The awardee's proposal stated, in effect, that it believed it could purchase the assets listed in the ATV report for \$[DELETED], rather than \$56.2 million. AR, Tab 22, Leidos FPR, Vol. III, at 41. The agency contends that although the RFP specified that the maximum value of the ATV report would be the amount listed in the report, *i.e.*, \$56.2 million, there was no requirement to propose a price at that level. Supp. MOL at 17. The agency states that while the awardee proposed to provide the ATV report assets at \$[DELETED] lower than the maximum stated value, the agency did not consider this a price risk. Supp. MOL at 17-18. To the extent the protester disagrees with the agency's judgment, we find no basis to sustain the protest.

#### Weaknesses Assigned to Enterprise's Price Proposal

NASA identified five risks associated with Enterprise's price proposal. AR, Tab 16, SEB Report, at 81-86. The agency assigned none to Leidos' proposal. AR, Tab 17, SSS, at 9. Despite these concerns, the agency found the protester's proposed price to be reasonable, and neither the SEB's evaluation nor the award decision state that the five risks assigned to the protester's proposal affected its evaluation under the non-price factors. Instead, the award decision states as follows: "The SEB concluded that both Leidos' and [Enterprise's] prices were reasonable and that no unbalanced pricing existed. In its FPR, Leidos addressed all pricing weaknesses that had been identified in discussions; [Enterprise] had some price risks that remained." *Id.*

We find that, even if the five price weaknesses were improperly assigned to the protester's proposal, there is no basis to conclude that the agency's actions here could have prejudiced the protester. Neither the SEB report nor the award decision state that these price weaknesses had any effect on the protester's mission suitability or past performance evaluations. Furthermore, the award decision did not state that the five weaknesses had any impact on the tradeoff decision. *See* AR, Tab 17, SSS, at 9. Elimination of the five weaknesses would place the protester and awardee in the same position of having no price weaknesses; nothing in the record suggests that elimination of these weaknesses would result in improvement of the evaluation of the protester's proposal under any other evaluation factor. We therefore conclude that there is no need to discuss these issues further. *See Odyssey Mktg. Group, Inc.*, B-412695, B-412695.2, Apr. 21, 2016, 2016 CPD ¶ 109 at 6.

## Past Performance Evaluation

Next, Enterprise argues that NASA unreasonably evaluated offerors' past performance. Specifically, the protester contends that the agency unreasonably assigned a weakness to its proposal based on its performance of the incumbent contract, and unreasonably found one of the awardee's past performance references to be very highly relevant. Protest at 70-79. For the reasons discussed below, we find no basis to sustain the protest with regard to the challenges to the evaluation of the protester's past performance. Although we agree that the agency's evaluation of the awardee's proposal was not adequately documented, we conclude that this error did not prejudice the protester.

Our Office will examine an agency's evaluation of an offeror's past performance only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations, since determining the relative merit of an offeror's past performance is primarily a matter within the agency's discretion. Richen Mgmt., LLC, B-409697, July 11, 2014, 2014 CPD ¶ 211 at 4. In conducting a past performance evaluation, an agency has discretion to determine the scope of the offerors' performance histories to be considered, provided all proposals are evaluated on the same basis and consistent with the solicitation requirements. Guam Shipyard, B-311321, B-311321.2, June 9, 2008, 2008 CPD ¶ 124 at 3. Although an agency is not required to retain every document generated during its evaluation of proposals, the agency's evaluation must be sufficiently documented to allow our Office to review the merits of a protest. 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 source selection decision. Solers, Inc., B-404032.3; B-404032.4, Apr. 6, 2011, 2011 CPD ¶ 83 at 9.

Here, offerors were instructed to provide information for up to five contracts "for similar efforts," with a minimum average annual incurred cost or price of \$35 million, and which are active or completed within 5 years of the release of the solicitation. RFP at III-20. The RFP advised that the agency would evaluate relevant experience, which was defined as "the accomplishment of work that is comparable in content, complexity, and size to the work required under this procurement." RFP at IV-8. The RFP further stated that the relevance "will also be assessed by considering[::] (1) services performed comparable in content, (2) size and complexity of the contract, (3) subcontract management, and (4) customer relationship management." Id. The agency was to evaluate the information provided by offerors in their proposals, "as well as any other information obtained independently by the Government." Id.

NASA assigned Enterprise's proposal a high confidence rating for the past performance factor, based on two significant strengths, four strengths, and one weakness. AR, Tab 17, SSS, at 5. NASA assigned Leidos' proposal a very high confidence rating, based on two significant strengths and three strengths. Id.

## Enterprise's Past Performance

Enterprise argues that NASA unreasonably assigned its proposal a weakness based on its performance of the incumbent ACES contract. Protest at 70-77. Although offerors were permitted to identify up to five contracts for the past performance evaluation, the protester did not identify the ACES contract in its proposal. See AR, Tab 5b, Enterprise Past Performance Proposal, at II-1. The SEB nonetheless considered the ACES contract to be relevant, obtained information regarding the protester's performance, and assigned the protester's proposal a weakness based on this contract. AR, Tab 16, SEB Evaluation, at 255. The agency stated that the protester's "overall Performance was Marginal" for the incumbent contract," and that "[t]he Offeror's performance on this contract increases the risk of unsuccessful contract performance." Id. at 230, 255.

Enterprise first argues that NASA unreasonably "cherry picked" certain negative ratings and findings from contractor performance assessment reports (CPARs) for the ACES contract. Protester's Comments, Apr. 1, 2019, at 47, 53-54. In particular, the protester contends that the agency gave disproportionate weight to performance issues in two CPARs, relating to the protester's performance from May 2015 to April 2016 and May 2016 to April 2017.

NASA noted that the CPARs for the protester's performance of the ACES contract assigned ratings of unsatisfactory to satisfactory in three areas: quality of performance, schedule, and management. AR, Tab 16, SEB Evaluation, at 252. In particular, the agency noted that the protester's performance was assigned unacceptable ratings for these three factors during the May 2015 to April 2016 and May 2016 to April 2017 periods. Id. Although there were some strengths noted regarding the protester's performance, the agency found that these were outweighed by "several areas where the Offeror either did not meet performance requirements or the quality of the work provided was not satisfactory and, as a result, adversely impacted NASA." Id. Among the problems listed in the CPARs and cited in the agency's evaluation were:

Two major ACES IT security plans with items crucial to NASA IT operations contain numerous unacceptable issues identified as the result of a third party assessment, resulting in an unacceptably vulnerable IT environment. . . .

There are thousands of required software updates for vulnerabilities (high or critical) that were not successfully deployed to ACES seats, despite the submission of multiple change requests and the identification of vulnerabilities by NASA for several months. . . .

Id. at 253.

In addition, the agency noted that the protester failed to meet its small business subcontracting goals, which resulted in the assignment of marginal ratings for several CPARs. Id. at 254. The agency also cited the following concern regarding the



protester's management of a request by its subcontractor for lost wage compensation in connection with the government shutdown in October 2013:

The Offeror displayed poor management of its subcontractor relations by directing the subcontractor to seek direct relief from NASA. This action taken by the Offeror was inappropriate and required NASA to spend valuable resources to prepare a response to the Offeror's subcontractor while ensuring NASA did not adversely affect the contractual relationship between NASA and the Offeror, and the Offeror and its subcontractor.

Id. at 255.

The record also shows that for three of the five CPARs reviewed by the agency for the ACES contract, the contracting officer stated that he "would not" or "probably would not" recommend the protester for award of similar requirements based on the protester's performance. AR, Tab 6a, ACES CPAR 2012-13, at 8; ACES CPAR 2015-16, at 16; ACES CPAR 2016-17, at 11.

To the extent the protester argues that the agency unfairly focused on the most negative information within the CPARs, we find no basis to conclude that the agency acted unreasonably. In this regard, such a focus on significant performance is a matter well within the agency's discretion. See Guam Shipyard, supra.

Next, Enterprise argues that NASA failed to consider its most recent CPAR for the ACES contract, which covered the period of performance for May 2017 to April 2018. The protester contends that information in this CPAR would have established that the weakness assigned to the protester's proposal under the past performance factor relating to the ACES contract was not reasonable. The agency acknowledges that it did not review this CPAR, but states that it was not available at the time the agency conducted the evaluation of offerors' past performance.

Although an agency is not required to identify and consider each and every piece of past performance information, it must consider information that is reasonably available and relevant as contemplated by the terms of the solicitation. General Dynamics, American Overseas Marine, B-401874.14, B-401874.15, Nov. 1, 2011, 2012 CPD ¶ 85 at 6. Our Office has explained, however, that there is no general requirement that an agency continue to seek updated performance information once its past performance evaluation is complete--even where the performance concerns the incumbent contract. Erickson Helicopters, Inc., B-409903, B-409903.2, Sept. 5, 2014, 2014 CPD ¶ 288 at 6; CMJR, LLC d/b/a Mokatron, B-405170, Sept. 7, 2011, 2011 CPD ¶ 175 at 7-8.

The RFP was issued on February 1, 2018, and the past performance portions of offerors' proposals were due on March 6. COS at 3. The SEB reviewed five CPARs for the protester's performance of the ACES contract for performance between May 2012 and April 2017. Id. at 103-104. The agency states that it did not consider Enterprise's past performance for the ACES contract during the May 2017, through April 2018,

period because the CPAR for this period was not available at the time of the evaluation. Supp. COS at 13. The agency completed its evaluation of offerors' past performance on September 14. Id. The agency conducted discussions with Leidos and Enterprise in early October 2018, and provided an opportunity to submit revised proposals by October 29. The protester's FPR did not revise its past performance information, and the agency therefore did not revise the past performance evaluation. COS at 22.

On November 30, the agency provided the protester a copy of the completed ACES CPAR for the May 2017, through April 2018, period, and advised that the protester could submit comments in response by January 29, 2019. See Protester's Comments, Exh. 29, Email from Agency to Enterprise, Nov. 30, 2018. On December 11, the agency provided the final briefing to the SSA, which included the SEB's past performance evaluation findings and ratings. AR, Tab 16, SEB Report, at 2. On December 21, the SSA selected Leidos' proposal for award. AR, Tab 17, SSS, at 10. On January 28, 2019, the protester entered its rebuttal comments to the CPAR. COS at 103.

The protester argues that the record shows that members of the SEB were aware of the CPARS for 2017-2018 prior to the SEB's briefing the SSA, and prior to the SSA's award decision. Protester's Comments, Apr. 1, 2019, at 52. Based on the record here, we agree with the agency that the agency reasonably evaluated Enterprise's past performance based on the available information. As noted above, the agency concluded its past performance evaluation of offerors' past performance approximately 3 months prior to the issuance of the ACES CPAR for the 2017-2018 period. We see no basis to conclude that the agency unreasonably failed to reopen the past performance evaluation months after the evaluation had been completed, in order to consider the completed CPAR.<sup>12</sup> See Erickson Helicopters, Inc., supra; CMJR, LLC d/b/a Mokatron, supra.

Next, Enterprise argues that NASA failed to consider the rebuttals it provided in the CPARs for its performance of the ACES contract. In both cases cited by the protester, however, the record shows that the agency directly responded to the protester's rebuttals in the CPARs. Moreover, the contracting officer states that the agency considered all rebuttals provided in the protester's CPARs. COS at 103.

---

<sup>12</sup> In any event, as the intervenor notes, the CPAR for the ACES contract covering the May 1, 2017, through April 30, 2018, period shows, at best, a modest improvement in the protester's performance. This CPAR states that the protester's performance for the ACES contract improved under the small business category from marginal to satisfactory, and under the regulatory compliance category from unsatisfactory to satisfactory. See Protest, Exh. 14, ACES CPAR 2017-18, at 2. However, the protester's ratings under the quality factor remained unsatisfactory, and the ratings under the schedule and management factors remained marginal. Id. at 1-2. Additionally, the contracting officer stated that, based on Enterprise's performance, she would not recommend award to the protester for similar requirements in the future. Id. at 8.

In the CPAR for May 2013 to April 2014, the agency assigned a marginal rating based on the protester's failure to meet four of the six small business utilization goals for the ACES contract. AR, Tab 6a, ACES CPAR 2013-14, at 2, 9. In the rebuttal portion of the CPAR, the protester stated that it had been "deceived" by one of its subcontractors as to its small business status. Id. at 15. The protester argued that it relied on the subcontractor's representations in good faith, and that but for the deception, it could have subcontracted with other firms that would have allowed it to meet the small business subcontracting goals. Id.

The CPAR included a statement by the NASA reviewing official that the rebuttal had been reviewed and rejected, and that the agency found no basis to alter the marginal rating based on protester's comments. Id. at 16. Additionally, the record shows that the protester's performance problems continued, as the protester failed to meet its small business utilization goals in the CPARs for May 2014 to April 2015, May 2015 to April 2016, and May 2016 to April 2017. AR, Tab 6a, ACES CPAR 2014-15, at 2; Tab 6a, ACES CPAR 2015-16, at 2; Tab 6a, ACES CPAR 2016-17, at 2. The protester, however, did not include a specific rebuttal to the ratings in those three CPARs, aside from noting in the CPAR for April 2014 to May 2015 that the protester "concur[ed]" with the marginal rating. AR, Tab 6a, ACES CPAR 2014-15, at 8.

The protester also argues that the agency failed to consider its rebuttals in connection with the May 2016 to April 2017 CPAR, which rated the protester's performance as unsatisfactory under the quality and regulatory compliance factors, and marginal under the management and small business compliance factors. Protester's Comments, Apr. 1, 2019, at 48-49.

The record shows that the reviewing official expressly stated that he found no basis to change any of the assigned ratings, because certain of the rebuttal responses concerned performance outside the rating period, while other responses were viewed by the reviewing official as "inaccurate." AR, Tab 6a, ACES CPAR 2016-17, at 14. Also, as discussed above, the agency states that the SEB reviewed this CPAR as part of its evaluation, including all rebuttals included in the report. See Supp. COS at 13. We therefore find no basis on the record to conclude that the agency failed to consider the entirety of the CPARs in its evaluation of the protester's proposal.

#### Leidos' Past Performance

Next, Enterprise argues that one of the two significant strengths assigned to Leidos' past performance record was unreasonable because it was based on a non-relevant contract reference. The agency found two of Leidos' contract references to be very highly relevant, including the Facilities Development and Operations (FDOC) contract with NASA for mission facilities development and operations that currently support the International Space Station Program at the Johnson Space Center. AR, Tab 16, SEB Report, at 73, 261.

The agency found that the FDOC contract was “highly relevant to sixteen (16) of nineteen (19) NEST PWS elements.” AR, Tab 16, SEB Report, at 73. The agency’s evaluation noted that the CPAR stated that Leidos received exceptional ratings for the “execution and completion of NASA Mission Control Center systems and services,” and also reported that the awardee received high or very high ratings for all performance areas. Id. For this reason, the agency concluded that “this exceptional performance and high relevancy greatly enhances the potential for successful contract performance.” Id.

Enterprise argues that the FDOC contract should not have been found very highly relevant because it has little to no relevance to the work required under NEST. Protester’s Comments, Apr. 1, 2019, at 56. With regard to the agency’s conclusion that the FDOC contract was relevant because that contract involved significant work for 16 of 19 NEST PWS elements, the protester contends that there is no analysis in the contemporaneous record as to why the work is similar.

The agency explains that it evaluated the relevance of the FDOC contract based on past performance questionnaires that were completed by the FDOC contracting officer’s representative. COS at 102; Agency Response to GAO Questions, May 2, 2019, at 6. As the protester notes, however, the questionnaire asked the FDOC contracting officer’s representative to evaluate whether the FDOC contract was similar to the NEST requirements based on general terms such as “contract management,” and “program management,” without providing detailed descriptions of the NEST requirements. See AR, Tab 6c, FDOC Questionnaire, at 4.

On this record, we agree with Enterprise that NASA did not clearly explain its basis for finding that the FDOC contract was very highly relevant to the NEST requirements. Nonetheless, even assuming the awardee’s performance of the FDOC contract should have been discounted--or even excluded from consideration--there is no basis in the record to conclude that the protester was prejudiced by this error. In this regard, as discussed above, we conclude that the agency reasonably assigned a weakness to the protester’s proposal based on its performance of the ACES contract, and find no basis to conclude that the agency’s assignment of a very high confidence rating to the awardee under the past performance factor was unreasonable. Even if the awardee’s evaluation rating was lowered to a similar high confidence rating, this change, along with others discussed herein and summarized below, would not have reasonably put the protester in line for award. On this record therefore, we find no basis to sustain the protest regarding the agency’s past performance evaluation.

#### Summary of Prejudice

For the reasons discussed above, we find that NASA’s evaluation of Enterprise’s and Leidos’ proposals was unreasonable in the following areas: (1) a failure to assign a weakness to the awardee’s proposal in connection with non-compliant equipment, (2) a failure to assign part of a strength to the protester’s proposal regarding OLAs in connection with the management approach subfactor of the mission suitability

evaluation factor, and (3) unreasonable evaluation of the relevance of one of the awardee's past performance references. In addition, we conclude that the five price weaknesses assigned to the protester's proposal need not be addressed because they had no apparent effect on the evaluation of the protester's mission suitability factor or past performance evaluations. We also note that, even if the protester's calculation of the \$[DELETED] effect of the agency's failure to consider Leidos' proposed non-compliant equipment was correct, and even if the protester were correct that the agency failed to account for a \$[DELETED] difference in the offerors' proposed prices to reflect the ACES assets that the protester did not disclose in its ATV report, this would not overcome the advantage of Leidos' lower-priced proposal.

On the record here, viewing all of these issues in the light most favorable to the protester, we find no basis to conclude that the protester would overcome the awardee's significant evaluated advantage under the mission suitability factor or its lower price. We also find no basis to conclude that the failure to document the relevance of the awardee's challenged contract reference could result in a higher rating for the protester under the past performance factor. For these reasons, we conclude that the protester was not prejudiced by the agency's evaluations.

The protest is denied.

Thomas H. Armstrong  
General Counsel