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# Decision

**Matter of:** Jacobs Polar Services-CH2M Facility Support Services

**File:** B-418390.2; B-418390.3; B-418390.4

**Date:** June 12, 2020

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## DIGEST

1. Protest challenging agency's cost realism analysis and evaluation of professional employee compensation plans is denied where the record demonstrates that the evaluation was reasonable and consistent with the terms of the solicitation and the requirements of Federal Acquisition Regulation provision 52.222-46.

2. Protest challenging the agency's technical evaluation and source selection decision is denied where the record demonstrates only one instance of disparate treatment by which the protester was not prejudiced, and the evaluation and source selection were otherwise reasonable and consistent with the solicitation.

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## DECISION

Jacobs Polar Services-CH2M Facility Support Services (Jacobs), of Englewood, Colorado, protests the award of a contract to Battelle Memorial Institute (Battelle), of Columbus, Ohio, pursuant to request for proposals (RFP) No. 49100419R1001, issued by the National Science Foundation (NSF), for Arctic research support and logistics services. The protester contends that the agency's evaluation and source selection decision are unreasonable.

We deny the protest.

## BACKGROUND

The RFP was issued on February 15, 2019, pursuant to Federal Acquisition Regulation (FAR) part 15, for award of a cost-plus-fixed-fee contract. Agency Report (AR), Tab 26, RFP §§ L.1, L.2.<sup>1</sup> The RFP contemplated a period of performance that consists of a 4-month phase-in period, a 4-year base period, three 2-year option periods, a 4-month phase-out period, and an option to extend services for up to six months pursuant to FAR clause 52.217-8. *Id.* § F.2 at F-1. The RFP requires that the contractor provide logistics, operations, and other support for Arctic research projects and facilities sponsored by NSF or other agencies, as directed by NSF. *Id.* § C.2 at C-2.

The RFP included the following evaluation factors, listed in descending order of importance: technical, past performance, and cost/price. *Id.* § M.5.1. The technical factor included the following subfactors, also listed in descending order of importance: science support planning and execution; concept of operations and core competencies; and facilities management and operations. *Id.* The RFP stated that the technical factor and subfactors would be evaluated for strengths and weaknesses and assigned one of the following adjectival ratings: excellent, very good, satisfactory, marginal, and unacceptable.<sup>2</sup> *Id.* § M.6.4. In addition, the RFP included FAR provision 52.222-46, Evaluation of Compensation for Professional Employees. *Id.* § M.1. The RFP stated that cost proposals would be evaluated for completeness, reasonableness, and realism. *Id.* § M.8.1. Award would be made to the offeror that provided the best value to the government, where the technical and past performance factors combined were significantly more important than the cost/price factor. *Id.* §§ M.4, M.5.1.

The agency received four proposals in response to the RFP, including from Jacobs and Battelle. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 7. The source selection authority (SSA) selected Battelle for award, and following a debriefing, Jacobs filed a protest with our Office. *Id.* In response to the protest, the agency advised that it would take corrective action by "re-examin[ing] the underlying award decision . . . [and] making a new award decision." Request for Dismissal, B-418390, Jan. 13, 2020, at 1. Accordingly, our Office dismissed the protest as academic. *Jacobs Polar Services-CH2M Facility Support Services*, B-418390, Jan. 17, 2020 (unpublished decision).

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<sup>1</sup> Citations to the RFP are to the conformed solicitation provided by the agency at Tab 26 of the agency report.

<sup>2</sup> The past performance factor was to be evaluated for how an offeror's past and present performance on recent and relevant projects validated anticipated future performance, and assigned one of the following ratings: excellent, very good, satisfactory, neutral, marginal, or unsatisfactory. RFP § M.7.

During corrective action, the agency “re-examined its price and cost analysis, including Offerors’ proposed labor rates and NSF’s Total Probable Cost adjustments, re-examined its analysis of Offerors’ proposed Professional Compensation, and the SSA performed a new technical evaluation. . . .” COS/MOL at 8. In particular, the SSA’s re-evaluation removed three significant weaknesses identified by the technical evaluation team (TET) in Jacobs’s proposal that the SSA concluded were either not weaknesses, or not significant, but agreed with the remainder of the evaluation and the ratings assigned by the TET. AR, Tab 39a, Source Selection Decision at 5-6. The SSA’s final overall evaluation of the proposals was as follows:

	<b>Battelle</b>	<b>Jacobs</b>
<b>Science Support Planning and Execution</b>	Excellent	Satisfactory
<b>Concept of Operations and Core Competencies</b>	Very Good	Satisfactory
<b>Facilities Management and Operations</b>	Excellent	Satisfactory
<b>Past Performance</b>	Very Good	Very Good
<b>Proposed Cost</b>	\$260,711,170	\$297,606,828
<b>Total Evaluated Cost</b>	\$285,131,122	\$313,104,615

*Id.* at 8. On February 25, the agency again selected Battelle for award. *Id.* at 9. This protest followed.<sup>3</sup>

## DISCUSSION

The protester challenges multiple aspects of the agency’s evaluation and selection decision. Primarily, Jacobs argues that the agency’s cost realism analysis and evaluation of Battelle’s professional employee compensation are unreasonable, and that Battelle’s proposal should have been rejected by the agency. Jacobs additionally argues that the evaluation of its technical proposal was unreasonable and treated the offerors disparately, resulting in a flawed selection decision. Although we do not specifically address all of Jacobs’s arguments, we have fully considered all of them and find that they afford no basis on which to sustain the protest.

In reviewing a protest challenging an agency’s evaluation of proposals, our Office will not reevaluate proposals or substitute our judgment for that of the agency, as the evaluation of proposals is generally a matter within the agency’s discretion. *Del-Jen Educ. & Training Group/Fluor Fed. Sols. LLC*, B-406897.3, May 28, 2014, 2014 CPD ¶ 166 at 8. Rather, we will review the record to determine whether the agency’s

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<sup>3</sup> The protest was initially filed on March 6, 2020, the same day the protester received a written debriefing from the agency. However, citations in this decision to “Protest” are to the Consolidated Amended and Supplemental Protest filed by Jacobs on March 16, that “corrects clerical errors in its protest filed on March 6, 2020, and is consolidated with supplemental information learned from and timely filed within ten days of the Agency’s debriefing issued on March 6, 2020.” Protest at 1.

evaluation was reasonable; consistent with the stated evaluation criteria, applicable procurement statutes, and regulations; and adequately documented. *Shumaker Trucking & Excavating Contractors, Inc.*, B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. A protester's disagreement with an agency's evaluation does not show that it lacked a reasonable basis. *Jacobs Tech., Inc.*, B-411784, B-411784.2, Oct. 21, 2015, 2015 CPD ¶ 342 at 6.

#### Cost Realism Analysis and Compensation for Professional Employees Evaluation

The protester argues that the agency failed to perform a reasonable cost realism analysis of Battelle's proposal, and Battelle failed to propose a sufficient level of effort or compensation to meet contract requirements. Protest at 15-17; Comments & Supp. Protest at 10-22. The agency argues that the cost realism analysis was performed in accordance with the methodology set forth in the RFP, and NSF reasonably concluded that Battelle's proposed cost was realistic. COS/MOL at 21-27; *see also* Supp. COS/MOL at 5-11.

The FAR explains that an agency performs 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); *Noridian Admin. Servs., LLC*, B-401068.13, Jan. 16, 2013, 2013 CPD ¶ 52 at 4. In assessing cost realism, an agency is not required to conduct an in-depth cost analysis, *see* FAR § 15.404-1(c), or to verify each item; rather, the evaluation requires the exercise of informed judgment by the contracting agency. *AdvanceMed Corp.; TrustSolutions, LLC*, B-404910.4 *et al.*, Jan. 17, 2012, 2012 CPD ¶ 25 at 17. 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. *Id.* Our review of an agency's cost realism analysis is limited to determining whether the cost analysis is reasonably based and not arbitrary. *Orbital Sciences Corp.*, B-414603, B-414603.2, July 26, 2017, 2017 CPD ¶ 249 at 9.

As noted, the RFP required that the agency evaluate cost proposals for completeness, reasonableness, and realism. RFP § M.8.1. The RFP stated that the agency would use a standard deviation analysis to determine the realism of offerors' proposed labor rates, and provided a detailed process as follows:

[T]he Government expects to utilize the following steps: 1) develop an average labor rate for each labor category; 2) calculate the standard deviation of the average rate for each labor category; 3) determine if the proposed labor rate is within one (1) standard deviation of the average labor rate for the respective labor category; 4) the Government expects to consider a proposed labor rate that is within one (1) standard deviation of the respective average labor rate to be a realistic rate, subject to cost analysis techniques in accordance with FAR 15.404; 5) the initial calculations for average labor rate and standard deviation will not be

recalculated if a competitive range is set; 6) only acceptable offers may be used for statistical analysis; and 7) the Government reserves the right to utilize only a sample of the labor rates for cost realism analysis. If an Offeror's proposed labor rate is more than one (1) standard deviation below the average for that labor rate, the Government will review the submitted supporting documentation for that rate. If the Government determines that the supporting documentation supports the realism of the proposed rate, [no] adjustment will be made to the Offeror's proposed rate. If inadequate or no justification [is provided] by the Offeror for that rate, the Government will adjust that rate to be equal to one (1) standard deviation below the average for purposes of calculating the most probable cost for that Offeror.

*Id.* § M.8.4. To perform its analysis, the agency identified 112 of 168 unique labor categories that would allow an "apples-to-apples comparison" of unburdened labor rates. AR, Tab 38, Cost/Price Report at 3. The agency compared the labor categories, unburdened rates, hours proposed, period of performance and total for all offerors, and computed the average rate and standard deviation for each labor category. *Id.* Using this analysis for these labor categories, the contracting officer identified labor rates proposed by Battelle for each period of performance that were determined to be unrealistic, and upwardly adjusted the rates as stated in the RFP. *Id.* at 5-6.

The RFP also stated that the agency would evaluate deviations from the RFP's suggested labor categories and/or suggested labor hours to determine if the proposed deviation is consistent with the offeror's technical proposal, and that adjustments could be made if the deviations were determined to be inadequate for the requirements or the proposed approach. RFP § M.8.3. Battelle proposed deviations in six areas (relating to both labor categories and labor hours); the agency accepted four of the six proposed deviations, and upwardly adjusted Battelle's proposed cost as a result of its analysis of the remaining two deviations proposed. AR, Tab 38, Cost/Price Report at 10-11.

Specifically, in its cost workbook, Battelle proposed to reduce the number of hours required for the phase-in/phase-out period of performance. Although the agency noted that "[a]ll offerors significantly reduced the number of hours required for phase-in/phase-out, which suggests that NSF's estimate was high," the agency added [DELETED] labor hours to Battelle's proposal for those performance periods.<sup>4</sup> *Id.* at 10. In addition, the agency added [DELETED] labor hours to Battelle's proposal for subcontract management and procurement administration because Battelle incorrectly assumed that

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<sup>4</sup> The record shows Battelle's proposal contained a discrepancy between the [DELETED] hours proposed for the phase-in/phase-out periods as stated in its cost narrative and the [DELETED] hours indicated in its cost workbook to compute its total proposed cost; accordingly, the agency added the [DELETED] missing hours (\$[DELETED]) to Battelle's total evaluated cost. AR, Tab 38, Cost/Price Report at 10.

these costs were accounted for in the government's estimate of other direct costs.<sup>5</sup> *Id.* at 10-11. The agency also compared Battelle's total proposed labor hours to the independent government cost estimate, and concluded that, adjusted as discussed above, the difference "is small and suggests that Battelle has a clear understanding of the requirement." *Id.* at 11. Based on all of these analyses, the agency upwardly adjusted Battelle's proposed cost a total of \$11,394,508.<sup>6</sup> *Id.* at 4.

We find the agency's cost realism analysis is reasonable. The analysis adhered to the methodology outlined in the RFP, adequately documented the basis for accepting or rejecting of Battelle's proposed deviations, and provided some measure of confidence that the rates proposed by Battelle are reasonable and realistic in view of the other cost information reasonably available to the agency as of the time of its evaluation.<sup>7</sup> *AdvanceMed Corp.; TrustSolutions, LLC, supra.*

The record also shows that the agency performed a second comparison of Battelle's proposed costs to the independent government cost estimate, as follows:

Because Battelle's proposed costs were significantly lower than the government's cost estimate of \$307,915,216, and because Battelle is the apparent successful offeror, Battelle's proposal was selected for additional analysis in comparison to the government's cost estimate. Here, NSF used burdened rates for the cost estimate and those burdened rates were compared to Battelle's burdened rates for the entire period of

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<sup>5</sup> Attachment L-2 of the RFP provided a surrogate amount (plug number) for other direct costs, which offerors were not to revise lower, although offerors could propose additional costs and provide justification for why such additional costs would be in the best interest of the government. See RFP § L.15.4.6.

<sup>6</sup> The agency also upwardly adjusted Battelle's proposed cost by \$13,025,443 in accordance with FAR clause 52.217-8, Option to Extend Services, and when added to \$11,394,508, resulted in a total upward cost adjustment of \$24,419,951. AR, Tab 38, Cost/Price Report at 4.

<sup>7</sup> Jacobs also argues the agency should have rejected Battelle's proposal rather than upwardly adjust the proposal by [DELETED] hours for its proposed deviation for subcontract management and procurement administration. Comments & Supp. Protest at 12. However, we find reasonable the agency's decision to make an upward adjustment but not reject the proposal. The agency's cost analysis noted that according to Battelle's disclosure statement, subcontract management and procurement administration costs are captured with other direct costs and an associated indirect charge related to the cost pool. AR, Tab 38, Cost/Price Report at 10. Therefore, Battelle had assumed that these costs and any associated burdens were included in the government's other direct costs. *Id.* We find that the agency's conclusion that Battelle incorrectly assumed that these costs were accounted for in other direct costs did not require that the agency find that Battelle failed to understand the RFP requirements.

performance. On average, Battelle has offered an average rate that is \$[DELETED] lower than the government's average rate. This was calculated by summing the rates proposed and dividing by the number of proposed rates.[]

Applying the \$[DELETED] delta to the [DELETED] hours proposed by Battelle results in an additional \$[DELETED]. Notably, even if NSF added this amount [] to Battelle's proposed estimated costs, Battelle's adjusted costs (\$[DELETED]) would still be lower than Jacobs' adjusted costs (\$313,104,615.37). In any case, the contracting officer determines that this adjustment is not warranted despite the \$[DELETED] difference based on the other cost realism analyses discussed herein.

AR, Tab 38, Cost/Price Report at 19. This second comparison was not an analysis required by the RFP, since the RFP stated only that the agency would use a standard deviation analysis after developing an average labor rate based on the offerors' proposed labor rates. This second comparison was prepared after Jacobs's first protest, and as the agency explains, solely for the purpose of comparing Battelle's proposed costs to the independent government cost estimate.

Jacobs argues that this comparison was unreasonable because it did not utilize the same rates employed for other analyses in the cost report, and does not otherwise incorporate those results. Comments & Supp. Protest at 19. We find this aspect of the agency's evaluation unobjectionable. The agency explains that it used burdened rates for this analysis because burdened rates were used to prepare the independent government cost estimate; therefore, any meaningful comparison required that the agency use Battelle's burdened rates, not unburdened rates as employed elsewhere in its cost realism analysis.

Jacobs also argues that this analysis is flawed because it was designed to yield "the lowest possible differential," and even then, the agency concluded "that [a] \$[DELETED] upward adjustment [to Battelle's proposed cost] was unwarranted." *Id.* at 19. To support its argument, Jacobs presents three scenarios under which a "reasonable" cost realism analysis would conclude that Battelle's total evaluated cost would be higher than Jacobs's total evaluated cost of \$313,104,615. *Id.* at 21 (indicating a total evaluated cost of either \$314,581,493, \$316,468,620, or \$368,338,449). However, in each of its scenarios, Jacobs progressively excludes labor rates to arrive at an increasingly higher differential or delta; when this differential is multiplied by Battelle's proposed hours, it results in an increasing upward adjustment to Battelle's proposed cost. *Id.* at 20 (computing the averages of 135 rates, 108 rates, and 90 rates).

For example, in its final scenario indicating a total evaluated cost of \$368,338,449, Jacobs's computations exclude the 18 highest rates proposed by Battelle because they purportedly account for "only [DELETED]% of the proportional labor hours, but completely skewed the average cost differential towards a semblance of proximity." *Id.* at 19, 21. The exclusion of these 18 rates affects, and increases, the average

independent cost estimate differential that Jacobs calculated. The agency and intervenor argue that this particular analysis is irrelevant since such circumstances-- exclusion of those labor categories representing Battelle's 18 highest labor rates--would never occur during performance of the contract. Supp. COS/MOL at 10; Intervenor Supp. Comments at 4. We agree.

Jacobs has attempted to demonstrate that its own calculations provide a more reasonable comparison of Battelle's proposed cost to the independent government cost estimate, or the agency's estimate of Battelle's potential cost to Jacobs's total evaluated cost. However, since Jacobs's calculations are skewed, Jacobs has not demonstrated that the agency's analysis is unreasonable.

Jacobs also argues that the agency failed to reasonably evaluate Battelle's total compensation plan, in accordance with FAR provision 52.222-46, and Battelle's unrealistically low cost creates risks to contract performance and demonstrates that it does not understand the contract requirements. Protest at 17-20. Jacobs argues that the agency should have rejected Battelle's proposal because although Battelle proposes that [DELETED] percent of its professional workforce will be incumbent employees, it proposes to pay [DELETED] percent of those employees less than their current pay, by more than half in some instances. Comments & Supp. Protest at 24-29. The agency argues that its evaluation of Battelle's total compensation plan is reasonable, and Battelle's proposal was thoroughly assessed to ensure that the proposed cost was not so low as to create unnecessary risk. COS/MOL at 27-29; Supp. COS/MOL at 12-14.

As noted, the RFP included FAR provision 52.222-46, Evaluation of Compensation for Professional Employees. RFP § M.1. The agency compared the fringe benefit rates proposed by Battelle and its proposed subcontractors to the rates charged by the incumbent during fiscal year 2019, and the rates proposed by Jacobs and its proposed subcontractors.<sup>8</sup> AR, Tab 35, Evaluation of Compensation for Professional Employees at 3. The agency found that Battelle's proposed fringe rates were higher than the incumbent rates and Jacobs's proposed rates, and concluded that they were "not unusually or unrealistically low and will not negatively affect Battelle's ability to provide uninterrupted high-quality work." *Id.* The contracting officer further performed a qualitative review of the fringe benefits offered by Battelle and Jacobs and their proposed subcontractors, and included a chart in the analysis identifying briefly each fringe benefit included in the prime and subcontractors' compensation plans. *Id.* (showing, for example, whether offerors provided a medical plan, life insurance, health savings account, etc.). The contracting officer noted that while the "fringe benefits are not identical with those proposed by Jacobs. . . NSF concludes that Battelle's proposed

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<sup>8</sup> Jacobs is the incumbent contractor for this requirement, however, one of its current subcontractors, Polar Field Services (PFS), was not included in its proposal; rather, PFS is proposed as a subcontractor by Battelle. See COS/MOL at 21.

benefits would not have a negative impact on recruitment and retention [and are] benefits that are comparable to, or in excess of, those offered by Jacobs.” *Id.* at 4.

Additionally, the agency evaluated salaries for professional employees by comparing unburdened direct labor rates. *Id.* Due to variations between the labor categories in the RFP and the incumbent contract, the agency matched similar labor categories between the two requirements and identified 40 labor categories for comparison. *Id.* The results of this comparison revealed that “Battelle’s [unburdened] labor rates were lower than those being offered by Jacobs in [DELETED] of the 40 [labor] categories. Of these rates, NSF concludes that [DELETED] of the [DELETED] positions proposed by Battelle are realistic.” *Id.* The agency further noted that “[i]n some cases the gap between the rates was less than a dollar and in some cases Jacobs proposed nearly double the rate,” and the cost team specifically discussed these labor categories with the TET chair who “carefully reviewed the matter and concluded that there were minimal risks to the program under FAR 52.222-46.” *Id.*

In addition, the agency “calculated the average labor rate and standard deviation for all professional labor categories,” and found that Battelle and its first tier subcontractor proposed an average rate that fell within one standard deviation of the mean. *Id.* at 5. The agency then “compared [the] average proposed direct labor rate to rates available on salary.com.” *Id.* The agency found that it could compare [DELETED] professional labor categories using salary.com data, and concluded that none of Battelle’s labor rates for these [DELETED] labor categories fell below the median salary.com rate. *Id.* The agency also considered the fact that Battelle proposed a key incumbent subcontractor that is aware of the prevailing labor rates for this work and that Battelle’s employee compensation plan explained the 22 national salary surveys it uses to determine salary ranges. *Id.* at 7.

Overall, the agency concluded that Battelle’s total compensation plan reflected a sound management approach and understanding of the requirements, an ability to recruit and retain qualified employees, and realistic compensation with benefits that would have a positive impact on retention and recruitment. *Id.* The agency further concluded that the salary rates considered the skills, complexity and difficulty of the professional labor categories, and that the total compensation package (paid time off, retirement/401(k) benefits, health insurance, and disability insurance) will have a positive impact on recruitment and retention.<sup>9</sup> *Id.*

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<sup>9</sup> The agency also stated: “Even if Battelle failed to comply with FAR 52.222-46, which it did not, NSF elects not to reject Battelle’s proposal under the discretionary standard at FAR 52.222-46(d) for any failure to comply. AR, Tab 35, Evaluation of Compensation for Professional Employees at 7. Subsection (d) of FAR provision 52.222-46 provides that: “Failure to comply with these provisions may constitute sufficient cause to justify rejection of a proposal.” In its analysis, the agency states that “the use of the word ‘may’ indicates that NSF has the option, but not the obligation, to treat as awardable or reject any proposal that fails to comply with FAR 52.222-46. NSF elects to treat

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The purpose of FAR provision 52.222-46 is to evaluate whether offerors will obtain and keep the quality of professional services needed for adequate contract performance, and to evaluate whether offerors understand the nature of the work to be performed. *Obsidian Sols. Grp., LLC*, B-416343, B-416343.3, Aug. 8, 2018, 2018 CPD ¶ 274 at 7. The provision requires that the agency evaluate an offeror's total compensation plan (salaries and fringe benefits) by considering its impact on recruiting and retention, its realism, and its consistency with a total plan for compensation. FAR 52.222-46(a). The provision cautions that "lowered compensation for essentially the same professional work may indicate lack of sound management judgment and lack of understanding of the requirement." FAR 52.222-46(b).

On this record, we find the agency's evaluation reasonable. The record shows that the agency utilized several evaluation tools to assess the salaries and benefits proposed by Battelle and concluded that Battelle would obtain and keep a high-quality workforce to perform the contract. The protester's disagreement does not provide a basis to conclude that the agency's evaluation was unreasonable. *Jacobs Tech., Inc., supra*.

#### Technical Evaluation

The protester also raises multiple challenges to the agency's evaluation of technical proposals. Jacobs contends that its proposal should have been more highly rated under the technical factor and subfactors, and the agency's evaluation of proposals was disparate and favored Battelle. Protest at 29-31; Comments & Supp. Protest at 12-13, 29-47. As a preliminary matter, we find some of the allegations raised by Jacobs to be untimely.

In its protest, Jacobs alleges that the agency unreasonably assigned satisfactory ratings under the concept of operations and core competencies, and the facilities management and operations subfactors. Protest at 29-30. More specifically, Jacobs asserts that its ratings should have been higher than satisfactory because it met or exceeded all of the RFP requirements and thoroughly explained its approach. Jacob also contends that "[t]o the extent the Agency downgraded Jacobs's proposal under Subfactors 2 and 3 based on the purported weaknesses identified in the first debriefing, these weaknesses are unreasonable as set forth above and cannot form a proper basis on which to downgrade Jacobs's proposal." *Id.* In its comments and supplemental protest, Jacobs identifies numerous "innovations" offered in its technical proposal, which Jacobs for the first time argues should have been identified as strengths. Comments & Supp. Protest at 41-45.

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(...continued)

Battelle's proposal as awardable and not to reject Battelle's competitive proposal to the extent its proposal fails to fully comply with FAR 52.222-46." AR, Tab 35, Evaluation of Compensation for Professional Employees at 7. Because we conclude that the agency's analysis is reasonable, we need not address this issue.

The agency contends that the satisfactory ratings were reasonable because Jacobs's proposal lacked innovation, did not propose an operation manager, failed to explain how the medical service provider needs would be met, and did not clearly demonstrate the ability to take on new challenges. COS/MOL at 18-19. The agency also argues that the allegations raised in the supplemental protest are untimely, and should have been raised after Jacobs received the agency's March 6 debriefing which provided Jacobs with its satisfactory adjectival ratings. Supp. COS/MOL at 34-36. Jacobs asserts that the debriefing did not provide the information necessary for Jacobs to raise these allegations because the debriefing failed to identify particular strengths or weaknesses assessed by the agency. Supp. Comments at 27. We disagree.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. Under these rules, a protest based on other than alleged improprieties in a solicitation must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2). Where a protester initially files a timely protest, and later supplements it with new grounds of protest, the later-raised allegations must independently satisfy our timeliness requirements, since our regulations do not contemplate the piecemeal presentation or development of protest issues. *Vigor Shipyards, Inc.*, B-409635, June 5, 2014, 2014 CPD ¶ 170 at 5. Additionally, where an initial protest raises general protest allegations and a supplemental protest provides specific "examples" of the alleged general flaws in the agency's evaluation, the supplemental grounds must independently satisfy our timeliness rules. *FR Countermeasures, Inc.*, B-295375, Feb. 10, 2005, 2005 CPD ¶ 52 at 9. Such a staggered presentation of "examples," each of which involves different factual circumstances and requires a separate explanation from the agency, constitutes piecemeal presentation of issues that our timeliness rules do not permit. *Id.*

In the March 6 written debriefing letter, the agency stated that it did not identify any significant weaknesses or deficiencies in the Jacobs proposal, and assigned the proposal a satisfactory rating for each technical subfactor. AR, Tab 42, Post-Corrective Action Debriefing, at 1-2. However, Jacobs did not argue in its initial protest that it should have been rated higher than satisfactory under the science support and planning subfactor because it met or exceeded all of the RFP requirements.<sup>10</sup> In this regard, the

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<sup>10</sup> The protester initially argued that the agency's evaluation unreasonably penalized Jacobs for three significant weaknesses identified by the TET in its evaluation of Jacobs's proposal under the science support planning and execution subfactor prior to NSF taking corrective action in response to Jacobs's previous protest. Protest at 20-29. On March 27, we dismissed these protest allegations to the extent that they relied upon "the agency's evaluation conclusions prior to its corrective action [which] culminated in the issuance of a new [source selection decision]." Electronic Protest Docketing System No. 20. As noted, the record shows that after the reevaluation, the SSA did not consider there to be any significant weaknesses in Jacobs's proposal. AR, Tab 39a,

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RFP instructed that for this subfactor, the agency would assess offerors on their approach to assisting researchers by recommending innovative technical solutions. RFP § M.6.1. Jacobs's initial protest argued that its proposal met or exceeded the requirements under the concept of operations and core competencies, and the facilities management and operations subfactors and was "consistent with Jacob's demonstrated exceptional performance on the incumbent contract." Protest at 29. Jacobs also set forth a bulleted list of "[e]xamples of Jacobs's demonstrated capabilities and understanding of requirements," such as "Program Enhancements," "Demonstrated capabilities," and "Concept of Operations," accompanied by citations to its proposal. *Id.* Jacobs provided no further detail or argument about these examples. By comparison, in its supplemental protest, Jacobs sets forth specific and detailed strengths the protester argues the agency failed to assess. Comments & Supp. Protest at 41-45.

We conclude that Jacobs knew or should have known of its basis of protest on March 6, when it received the agency's debriefing letter. Specifically, Jacobs knew that its proposal contained what it considered to be fourteen innovations that "exceeded the stated minimum requirements of the [s]olicitation" that if identified as strengths would likely have resulted in higher than satisfactory ratings; yet, Jacobs did not raise this claim until April 23. *Id.* Indeed, Jacobs's supplemental arguments here cite only to the RFP and its proposal, documents it possessed before it filed its initial protest. *Id.* On this record, we conclude that the protester's arguments regarding the evaluation of innovations in its technical proposal are untimely, and as such, we dismiss them. See *Vigor Shipyards, Inc., supra*.

Regarding Jacobs's allegations of disparate treatment, where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the proposals. *Paragon Sys., Inc.; SecTek, Inc.*, B-409066.2, B-409066.3, June 4, 2014, 2014 CPD ¶ 169 at 8-9. We have reviewed the record and conclude that the agency's evaluation was reasonable, and the differences in the evaluation were the result of differences between the proposals,<sup>11</sup> with one exception discussed below.

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(...continued)

Source Selection Decision at 5-6. Jacobs also explicitly withdrew these allegations. Comments & Supp. Protest at 7 n.6.

<sup>11</sup> For example, Jacobs argues that the agency evaluated proposals in a disparate manner with regard to their approaches to local hiring in Greenland. Comments & Supp. Protest at 34-35. However, the record shows that the agency assigned a strength to Battelle's proposal for its proposed [DELETED], as a means of connecting the Greenlandic community to the project's research. AR, Tab 30, Consensus TET Report at 5; see *also* Tab 28, Battelle Technical Proposal at 44. Although Jacobs argues that it should have received a similar strength for its proposed "local employment and capacity-building program", Jacobs admits that it "did not propose [DELETED] for Greenland, but it did propose to continue a proven program implemented by one of its subcontractors, which emphasizes hiring Greenlandic youth to build capacity."

(continued...)

Jacobs contends that it was unreasonable for the agency to assess a weakness in Jacobs's proposal for its cost-saving strategy to eliminate the helicopter coordinator position and have those duties performed by the science project manager, and yet accept a deviation proposed by Battelle to remove 5,600 labor hours based on the exact same strategy in the cost evaluation. Comments & Supp. Protest at 13. Jacobs argues that the only difference between the two proposals is that Battelle will be using Polar Field Services (PFS), and it is inequitable to credit Battelle for what PFS will do in the future while penalizing Jacobs for proposing to continue a proven cost-saving strategy, albeit with a different subcontractor. Supp. Comments at 18-20. We agree.

The record shows that Battelle proposed to reduce hours and positions based on PFS's incumbent experience in performing program requirements, including by 5,600 labor hours for the helicopter coordinator position, as follows:

*Helicopter Coordinator:* To streamline processes and ensure that all positions were efficiently supporting the program, the responsibilities of this position were historically absorbed by the Toolik Science Project Manager. This reduction is based on utilization of this position on the current contract and cost realized savings of the incumbent staffing model.

AR, Tab 28, Battelle Cost Proposal at 34. The agency accepted this proposed deviation in its cost realism analysis. AR, Tab 38, Cost/Price Report at 11 ("The NSF takes no exception to these removals."). On the other hand, Jacobs proposed that "[t]he Science [project manager] may also serve as the onsite helicopter coordinator during the summer." AR, Tab 29, Jacobs Technical Proposal at Vol. II-25. The agency assessed the following weakness in its evaluation of Jacobs's proposal under the science support planning and execution subfactor: "Having the science [project manager] serve as a helicopter coordinator at [Toolik Field Station] could lead to overtasking an overqualified person and staff burnout []." AR, Tab 30, Consensus TET Report at 20.

The agency contends that its evaluation was reasonable, given a key difference between the proposals: Battelle's approach involves a proven cost-saving strategy that is currently being performed by the incumbent subcontractor, while Jacob's approach provided no such assurances. Supp. COS/MOL at 8. Specifically, the agency argues that PFS--Battelle's proposed subcontractor--has demonstrated the ability to handle both positions while performing as the subcontractor on the incumbent contract, experience that Jacobs's proposed subcontractor does not possess. *Id.* However, the agency does not explain the basis for its conclusion that only PFS could implement the same cost-saving strategy. As such, we find that the agency disparately evaluated

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(...continued)

Comments & Supp. Protest at 35. Therefore, we conclude that there were differences between the offerors' proposals that account for the differences in the evaluation, and as such, the agency's evaluation was reasonable.

Jacobs's proposal by identifying this weakness in its technical proposal, and yet accepting Battelle's proposed reduction in labor hours for the same approach in its cost proposal.

Nevertheless, we conclude that this error did not competitively prejudice Jacobs, and elimination of this single weakness would not result in Jacobs having a substantial chance of receiving the award. Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was competitively prejudiced by the agency's actions, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. *Raytheon Co.*, B-409651, B-409651.2, July 9, 2014, 2014 CPD ¶ 207 at 17.

Here, the record shows that under the science support planning and execution subfactor, the agency assessed 40 strengths and found no weaknesses in Battelle's proposal and assigned a rating of excellent. AR, Tab 30, Consensus TET Report at 1-8. In the re-evaluation of Jacobs's proposal, the SSA did not consider three significant weaknesses identified by the TET, but otherwise agreed with their assessment of 16 strengths, 9 weaknesses, and a consensus rating of satisfactory. *Id.* at 19-23; AR, Tab 39a, Source Selection Decision at 5-6. Under the concept of operations and core competencies subfactor, the agency assigned Battelle's proposal a rating of very good based on 26 strengths and 2 weaknesses, and assigned Jacobs's proposal a rating of satisfactory based on 15 strengths and 16 weaknesses. AR, Tab 30, Consensus TET Report at 8-13, 24-28. Under the facilities management and operations subfactor, the agency assigned Battelle's proposal a rating of excellent based on 18 strengths and 3 weaknesses, and assigned Jacobs's proposal a rating of satisfactory based on 11 strengths and 4 weaknesses. *Id.* at 14-18, 29-31. Jacobs's protests do not challenge either the majority of strengths assessed in Battelle's proposal or weaknesses assessed in its own.

In addition, the record reflects that the SSA considered several of the strengths and weaknesses assigned by the TET, but did not specifically address the weakness assessed due to Jacobs's science project manager serving as a helicopter coordinator. On this record, there is no basis to conclude that absent this weakness, Jacobs's proposal should have been more highly rated, and therefore, no basis to conclude that Jacobs was prejudiced by this lone instance of disparate treatment. See *IAP World Servs., Inc.*; *Jones Lang LaSalle Americas, Inc.*, B-411659 *et al.*, Sept. 23, 2015, 2015 CPD ¶ 302 at 13-14. Therefore, we deny this protest allegation.

#### Source Selection Decision

Jacobs argues that the selection decision is based on a flawed evaluation, and is therefore unreasonable. Protest at 32-34; see *also* Comments & Supp. Protest at 47-48. The agency argues that the SSA performed a methodical and qualitative assessment of the relative merits of the four proposals submitted in response to the RFP, and was not required to perform a tradeoff between Jacobs's proposal and

Battelle's because the SSA reasonably determined that Battelle submitted a technically superior proposal with a lower evaluated cost. COS/MOL at 15-16, 32-34.

Source selection officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results; cost/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the test of rationality and consistency with the solicitation's evaluation criteria. *Olgoonik Global Security, LLC*, B-414762, B-414762.2, Sept. 8, 2017, 2017 CPD ¶ 282 at 4. Here, the SSA noted that relative to the other offers, including Jacobs's, Battelle's was the highest rated offer in all three technical subfactors, its past performance was rated as very good, and its total evaluated cost was the lowest. AR, Tab 39a, Source Selection Decision at 8. The record also shows that of all four offers, Jacobs's total evaluated cost was the highest. *Id.*

Although the SSA concluded that no tradeoffs were needed for the source selection, the SSA nonetheless found that the evaluators reasonably identified several important advantages or benefits to Battelle's proposal, including its understanding of the work and program, approach to interacting with the local communities, and approach to developing requirements for science facilities.<sup>12</sup> *Id.* at 9. The SSA further stated:

I would still select Battelle as the best value offeror even if Battelle's evaluated costs came close to, matched, or somewhat exceeded Jacobs' proposed and/or evaluated costs. In other words, even if NSF made some errors in its cost evaluation, which I do not believe it did, I view Battelle's non-cost superiority as overwhelming relative to Jacobs. Again, Battelle submitted a proposal that was comparatively superior in terms of the non-cost factors with the lowest total evaluated cost.

*Id.* On this record, we find the source selection decision to be reasonable.

The protest is denied.

Thomas H. Armstrong  
General Counsel

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<sup>12</sup> The SSA reviewed the offerors' past performance, found no negative past performance information, and concluded that past performance was not a discriminator in the award decision. AR, Tab 39a, Source Selection Decision at 8-9.