

# Decision

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**Matter of:** Stargates, Inc.

**File:** B-419349; B-419349.2; B-419349.3

**Date:** January 22, 2021

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Jonathan D. Shaffer, Esq., and Daniel H. Ramish, Esq., Smith Pachter McWhorter PLC, for the protester.

Toya Davis, Esq., and Timothy J. Stecker, Esq., Department of the Navy, for the agency.

Heather Weiner, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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**DIGEST**

1. Protest challenging the agency's evaluation of proposals is denied where the evaluation was reasonable and consistent with the terms of the solicitation.
  2. Protest that the awardee engaged in an improper "bait and switch" is denied where the record contains no evidence that the awardee did not intend to staff the task order with the proposed key personnel.
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**DECISION**

Stargates, Inc., of Arlington, Virginia, a small business, protests the Department of the Navy, Naval Sea Systems Command's issuance of a SeaPort Next Generation task order to KMS Solutions, LLC, of Middletown, Rhode Island, also a small business, pursuant to request for proposals (RFP) No. N0016420R3003, for non-personal, system engineering and technical assistance (SETA) support services. Stargates challenges the Navy's evaluation of the technical and cost proposals and contends that the best-value tradeoff and source selection decision was unreasonable.

We deny the protest.

**BACKGROUND**

The RFP, issued January 24, 2020, sought task order proposals from small businesses holding contracts under the Navy's SeaPort Next Generation multiple-award task order contract to provide a variety of information technology support services under a single cost-plus-fixed-fee task order, for a base year and four 1-year options. Agency Report

(AR), Encl. 2, RFP, at 2. The solicitation sought SETA services in support of the Program Executive Office Integrated Warfare Systems (IWS) Major Program Manager for Undersea Systems (referred to as “IWS 5.0”). RFP at 9.

The solicitation provided for award on a best-value tradeoff basis, considering the following three non-cost factors, in descending order of importance: technical and management, staffing plan and personnel, and past performance. RFP at 112. The technical and past performance factors were more important than cost, but the solicitation advised that cost could become more important in the tradeoff analysis as the difference between the non-cost factors became closer. *Id.* The technical/management factor consisted of two sub-elements: technical capabilities and understanding of the work, and management approach. *Id.* The staffing plan and personnel factor also consisted of two sub-elements: staffing plan (without cost) and personnel requirements. *Id.*

The RFP described the agency’s requirements in a statement of work (SOW). As relevant here, under the technical/management factor, the solicitation included a hypothetical technical scenario that required offerors to demonstrate their technical expertise and how they would support IWS 5.0 in such a situation. RFP at 98. As part of the response to the technical scenario, the solicitation required offerors to “identify how their proposed support in this scenario would be broken out among the twenty-eight (28) discrete elements of the SOW[.]” *Id.*

The Navy received timely task order proposals from two offerors, KMS and Stargates.<sup>1</sup> Contracting Officer Statement (COS) at 1. The final evaluation ratings and costs of Stargates’s and KMS’s proposals were as follows:

	<b>STARGATES</b>	<b>KMS</b>
<b>Technical/Management</b>	Good	Acceptable
<b>Staffing Plan &amp; Personnel</b>	Good	Good
<b>Past Performance</b>	Substantial Confidence	Satisfactory Confidence
<b>Total Evaluated Cost</b>	\$71,621,046	\$52,536,654

AR, Encl. 7, Source Selection Decision Document (SSDD), at 3.

The source selection authority (SSA) found that Stargates’s proposal was superior to KMS’s under all three of the non-cost evaluation factors. For the technical/management factor, the SSA determined that Stargates’s proposal had a “slight advantage” based on its “expertise across the IWS 5.0 portfolio and processes” and that KMS “put forward an

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<sup>1</sup> Although firms that compete for task orders under indefinite-delivery, indefinite-quantity (IDIQ) contracts are generally referred to as “vendors” who submit “quotations” and are “issued” task orders, the record and the parties’ briefings primarily use the terms “offerors,” “proposals,” and “award.” For the sake of consistency with the record, we refer to the firms that competed here as offerors who submitted proposals for the award of a task order.

acceptable proposal[.]” *Id.* at 8, 12. With regard to the staffing plan/personnel factor, the SSA found that “both offerors, qualitatively, have offsetting strengths, with STARGATES having a slight edge with the added credentials of its System Engineers.” *Id.* at 12. For past performance, the SSA concluded that Stargates “continues to maintain its slight advantage over KMS given its very relevant efforts, including the predecessor contract for this solicitation.” *Id.* Ultimately, however, the SSA found that Stargates’s technical advantages are “not worth an additional 36.33% premium (~\$19M)[.]” and therefore, concluded that, “as contemplated by the solicitation, [Stargates’s proposal] does not present as the best value to the Government.” *Id.*

On October 6, 2020, the agency notified Stargates that its proposal had not been selected for the task order. AR, Encl. 10, Unsuccessful Offeror Notification, at 1. Stargates then timely filed this protest with our Office.<sup>2</sup>

## DISCUSSION

Stargates challenges the Navy’s evaluation of the technical and cost proposals, and the selection of KMS’s lower technically rated, lower-cost proposal. Stargates argues that the Navy unreasonably assigned three weaknesses to its proposal under the technical/management factor. Stargates also argues that the agency failed to credit its proposal with additional strengths under the staffing plan/personnel factor. As for the awardee, the protester argues that the Navy failed to conduct a proper cost realism analysis. The protester also alleges that the awardee’s proposal relied on an impermissible “bait and switch” of two proposed key employees. For the reasons discussed below, we find the protester’s arguments to be without merit.<sup>3</sup>

In reviewing protests challenging an agency’s evaluation of proposals in a task order competition, our Office does not reevaluate proposals, but examines the record to determine whether the agency’s judgment was reasonable and in accordance with the stated evaluation criteria and applicable procurement laws and regulations. *Trandes Corp.*, B-411742 *et al.*, Oct. 13, 2015, 2015 CPD ¶ 317 at 6. An offeror’s disagreement with the agency’s judgment, without more, is insufficient to establish that the agency acted unreasonably. *STG, Inc.*, B-405101.3 *et al.*, Jan. 12, 2012, 2012 CPD ¶ 48 at 7.

### Technical/Management Factor

Stargates argues that the agency improperly assessed a significant weakness to its proposal under the technical/management factor based on its failure to address all 28

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<sup>2</sup> The value of the task order at issue exceeds \$25 million, so the protest is within our Office’s jurisdiction to review protests of task orders issued under multiple-award contracts awarded by defense agencies. 10 U.S.C. § 2304c(e)(1)(B).

<sup>3</sup> Although we do not address all of the protester’s arguments in this decision, we have considered all of them, and find no basis to sustain the protest.

elements of the technical scenario.<sup>4</sup> The protester also challenges the agency's assignment of two weaknesses under the same factor, one based on Stargates's failure to demonstrate its unique ability to execute the tasking, and the other based on the organization/presentation of Stargates's response to the technical scenario. The protester contends that all three weaknesses were unreasonable because, in each instance, its proposal adequately demonstrated that its approach could satisfy all of the RFP's requirements giving rise to the weakness. The agency maintains that Stargates's proposal provided a narrative response that either responded in a general, high-level way, or that grouped SOW elements together, rather than addressing each as required by the solicitation. As discussed below, we find none of the protester's allegations provide a basis upon which to sustain the protest.

### Significant Weakness

Stargates first challenges a significant weakness assessed to its proposal under the technical/management factor concerning its response to the solicitation's hypothetical technical scenario. As noted above, as part of the response to the technical scenario, the solicitation required offerors to "identify how their proposed support in this scenario would be broken out among the twenty-eight (28) discrete elements of the SOW."<sup>5</sup> RFP at 98. Specifically, the RFP provided:

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<sup>4</sup> Stargates also challenges the Navy's evaluation of its proposal under the staffing plan/personnel factor, arguing that the agency improperly failed to assess numerous additional strengths to its proposal. For example, the protester asserts that Stargates "proposed experienced personnel with the requisite experience and background needed to support the IWS 5.0's requirements over the duration of the contract per the 'Personnel Qualifications' document requested under the solicitation[.]" and that "[a]s part of a low risk, transition approach, entered into agreements with the incumbent companies to maintain the integrity and expertise to IWS 5.0." Protest at 34.

The agency responds that it thoroughly evaluated Stargates's proposal and concluded that these aspects of the protester's proposal did not "warrant a strength." Memorandum of Law (MOL) at 15, n.5. The protester has not asserted or demonstrated for any of these aspects how its proposal exceeded the requirements of the solicitation such that they warranted a strength. The protester's disagreement with the agency's judgment, without more, does not provide a basis to sustain the protest. *Ben-Mar Enters., Inc.*, B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7.

<sup>5</sup> The SOW "elements" refer to 28 enumerated paragraphs within section C of the solicitation that outline the scope of work requirements. Section L provides that these elements include one requirement for SETA Program Management within solicitation paragraph 2.1, seven requirements for System Engineering within paragraph 2.2, two requirements for Cost Analysis within paragraph 2.3, eleven requirements for Technical Support, Training, & Advisory Services within paragraph 2.4, four requirements for Test and Evaluation within paragraph 2.5, and three requirements for Technology Refresh/Technology Insertion (TR/TI) within paragraph 2.6. RFP at 98-99.

For each discrete element, the Offeror shall: (1) Identify and describe the primary technical challenge or opportunity associated with the scenario for that element. (2) Explain how the Offeror's services can assist the Government in realizing the opportunity and/or overcoming the challenge, including prior expertise in assisting a Program Office(s) achieving success(es) in capitalizing on similar opportunity(ies) and/or mitigating similar risk(s). Address potential impacts for the challenge and/or opportunity in terms of overall lifecycle cost, schedule and performance of USW/TUSW [undersea warfare and theater undersea warfare] systems.

RFP at 99.

The Navy evaluated Stargates's proposal and assessed a significant weakness for its response to the technical scenario because it found that Stargates failed to:

- a. Identify and describe the primary technical challenge or opportunity associated with the scenario for SOW elements or
- b. Explain how the Offeror's services can assist the Government in realizing the opportunity and/or overcoming the challenge,
- c. Explain prior expertise in assisting a Program Office(s) achieve success(es) in capitalizing on similar opportunity(ies) and/or mitigating similar risk(s) aside from repeatedly asserting that TEAM STARGATES SMEs [subject matter experts] play a role in assisting IWS 5.0.
- d. Address potential impacts for the challenge and/or opportunity in terms of overall lifecycle cost, schedule and performance of USW/TUSW systems.

AR, Encl. 8, Technical Evaluation Team (TET) Report at 8.

The protester does not dispute that the solicitation required that offerors address the two categories of information for each of the 28 "discrete elements." See Comments & Supp. Protest at 24. Rather, in the protester's view, Stargates's response to the technical scenario was succinct and thorough, in light of the page limitation imposed, but still sufficient to satisfy the requirement. The protester argues that the Navy's assignment of the significant weakness reflects an incomplete reading of Stargates's proposal, which categorized the 28 SOW elements into four proposed key categories for "ease [of] review." The protester cites to provisions in its proposal, which, it asserts, adequately address each aspect of the assigned significant weakness listed above, and which demonstrate that it thoroughly understood the scenario and the challenges/opportunities involved.

For example, with regard to the agency's determination that Stargates's proposal failed to identify the "primary technical challenge" associated with the scenario for the SOW elements, Stargates cites to a paragraph in its proposal, where it maintains it identified

the primary technical challenge as “existing sensor and software systems are not fully equipped to deal with this threat.” Comments & Supp. Protest at 22 (citing AR, Tab 3, Stargates Tech. Proposal, I-38, I-39).

In response, the agency acknowledges that this sentence in Stargates’s proposal discusses the technical challenge “in a high-level narrative way[.]” MOL at 5. The agency explains, however, that the issue for the TET was not that Stargates’s proposal “failed to mention the primary technical challenge[.]” *Id.* Rather, the agency explains that the TET determined there to be risk because Stargates “failed to adequately explain how its solution to the primary technical challenge would be broken out among the 28 discrete elements of the SOW.” *Id.* The agency notes that, per the solicitation, an adequate response to the technical scenario required an offeror to address two categories of information for each of the 28 elements: (1) the primary technical challenge or opportunity associated with each element; and (2) how the Offeror’s services can assist the government in realizing the opportunity and/or overcoming the challenge. RFP at 99.

The agency maintains that, in light of this solicitation language, offerors were asked to do more in their proposals than just “discuss the technical scenario generally and loosely incorporate discussion of the elements.” MOL at 3. Rather, “the requirement was to identify the technical challenge associated with each of the 28 elements, and explain how the offerors’ services can support the Government for each of the 28 elements.” *Id.*

The protester also cites to the introduction of Stargates’s technical scenario response, which acknowledges the complexity of the task and states that, “to ease review of [its] [technical scenario] response[.]” Stargates has organized the 28 SOW elements into four proposed key categories.<sup>6</sup> Comments & Supp. Protest at 24-26, *citing*, AR, Encl. 3, Stargates Proposal at I-38. The protester points out that its proposal provides a table identifying four proposed key categories and organizing the 28 SOW elements into the four key categories.<sup>7</sup> *Id.* Stargates’s technical scenario response then identifies the “primary technical challenge” for each of the four key categories. *Id.* The protester asserts that, “[w]ithin each [c]ategory, [Stargates’s response] identifies the challenge, aligned to areas/situations supported today, successes and a way ahead.”<sup>8</sup> Comments & Supp. Protest at 25. The protester argues that its method--of grouping the

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<sup>6</sup> The four key categories included the following: [DELETED]. AR, Tab 3, Stargates Tech. Proposal at I-38.

<sup>7</sup> The proposal notes that “Scenario Categories are in 100% [a]lignment with the SOW Sections[.]” *Id.*

<sup>8</sup> As an example, Stargates’s proposal identifies category 1 as “[DELETED]” and lists 26 SOW elements within this category. *Id.* Stargates’s proposal then states the primary challenge and opportunity for this category as follows: “The Silent Shark threat has burst onto the scene and is creating a stir for forces afloat. Existing sensor and software systems are not fully equipped to deal with this threat.” *Id.*

SOW elements into key categories, and aligning SOW elements to each category--was sufficient to satisfy the solicitation requirement to identify a "primary technical challenge" for each discrete SOW element.

The agency maintains that the provisions cited by Stargates are not helpful because they still do not show that Stargates's proposal articulated "the primary technical challenge or opportunity" for each of the 28 SOW elements as clearly required by the solicitation. Further, the agency explains that "[w]hile the comprehensive narrative" in Stargates's proposal was "sprinkled [with] SOW references (listed at the end of paragraphs that appeared to align with different SOW elements)," the "TET did not think that the primary technical challenge or opportunity for each element was articulated." MOL at 5. The agency explains, therefore, that "it was not clear how the offeror could assist the Government in realizing the opportunity and/or overcom[ing] the challenge which had not been addressed." *Id.*

We find the agency's determination that Stargates's proposal failed to identify the primary technical challenge for each SOW element was reasonable. The RFP specified that, for each discrete SOW element, offerors were to "[i]dentify and describe the primary technical challenge or opportunity associated with the scenario for that element." RFP at 99. Although the protester quotes several provisions from Stargates's proposal concerning the primary technical challenge, the text either discusses the technical challenge in a high-level narrative way or based on Stargates's grouping of the SOW elements into key categories. The protester has not alleged, nor cited to anything in its proposal, that shows that the proposal provided a response for each SOW element.

As our Office has recognized, offerors are responsible for submitting a well-written proposal with adequately-detailed information that allows for a meaningful review by the procuring agency. *Hallmark Capital Grp., LLC*, B-408661.3 *et al.*, Mar. 31, 2014, 2014 CPD ¶ 115 at 9. The solicitation cautioned offerors that "failure to provide the necessary information may result in their ratings being downgraded accordingly[.]" and that "proposal contents that appear to be unreasonable, unrealistic, unsupported, or unclear may result in a weakness, significant weakness, or deficiency." RFP at 98. On this record, we find nothing unreasonable regarding the agency's evaluation.

With regard to the Navy's next reason for assigning the significant weakness--that Stargates's proposal did not address how its services "can assist the [g]overnment in realizing the opportunity and/or overcoming the challenge"--the protester points to various statements in its proposal, which it maintains adequately reflect how Stargates's services can assist the government. See, e.g., Protest at 16-17, *citing* AR, Encl. 3, Stargates Proposal at I-41 ("As SWARM team participants we develop and mature capabilities for transition to production. . . . (SOW 2.1, 2.4.3, 2.4.6, 2.4.7, 2.4.9)[.];" *id.* at I-41 ("In the case of Silent Shark, we would continue to chair and staff the SWARM teams assigned by IWS 5.0. . . . (SOW 2.4.1, 2.4.2, 2.4.3, 2.4.6, 2.4.7, 2.4.9);" *id.* at I-43 ("[W]ith IWS 5.0 at the leading edge of virtualization, we are prepared to

modify cost analysis techniques to match technology advancements. (SOW 2.3.1, 2.4.7, 2.6.1).”

The agency responds that the “TET does not claim that the Protester did not mention how its services can assist the Government[;] rather it determined that Stargates failed to address how its proposal applied to all 28 discrete elements of the SOW as clearly required by the Solicitation.” MOL at 6; see AR, Encl. 8, TET Report at 8. The agency further explains that the protester’s examples--which “[m]erely includ[e] a reference at the end of a paragraph without explanation”--does not “provide enough information for the Navy to reasonably determine that the [o]fferor understood the requirement.”<sup>9</sup> MOL at 6. We find nothing unreasonable regarding the agency’s assessment of the significant weakness. Although Stargates contends that its response adequately responded to the requirement, the protester’s disagreement with the agency’s evaluation, without more, provides no basis to sustain the protest. *Ben-Mar Enters., Inc., supra*. On this record, we find no basis to sustain the protest.

### Weaknesses

Next, the protester challenges two weaknesses assigned to its proposal under the technical/management factor. The first weakness found that Stargates’s proposal relied too often on incumbent “status” without demonstrating why it was uniquely able to execute tasking. The second weakness concerned the organization/presentation of Stargates’s response to the technical scenario. Although we address only the first weakness here, we find neither provides a basis upon which to sustain the protest.

As relevant here, the RFP required that offerors “provide sufficient details and convincing rationale that address how the Offeror intends to meet the requirements.” RFP at 98. The solicitation provided that the agency would evaluate the degree to which the proposal demonstrates specific knowledge, capability and approach in performing all aspects of the SOW; the degree to which the proposal demonstrates an understanding of the interdependencies/interrelationships of the SOW tasking and IWS 5.0 programs; and the degree to which the proposal provides sufficient detail and rationale in meeting all aspects of the requirement. RFP at 115. The solicitation

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<sup>9</sup> In response to the other two reasons for the significant weakness--that Stargates failed to explain “prior expertise in assisting program office(s) achieve success(es)” aside from “repeatedly asserting [Stargates] SMEs play a role in assisting IWS 5.0”, and failed to address “potential impacts . . . and/or opportunity . . . of overall lifecycle cost, schedule and performance”--the protester similarly cites to various examples in its proposal, which it maintains, satisfy these requirements. See, e.g., AR, Encl. 3, Stargates Proposal at I-42. The agency again responds that the TET considered Stargates’s response inadequate and the significant weakness was assessed in light of Stargates’s failure to “apply its response to all 28 discrete elements of the SOW.” MOL at 7. The protester has not demonstrated that the cited provisions in Stargates’s proposal addressed each discrete SOW element as required by the RFP. We find no basis to sustain the protest.

cautioned offerors that “proposal contents that appear to be unreasonable, unrealistic, unsupported, or unclear may result in a weakness, significant weakness, or deficiency.” *Id.*

The agency assessed a weakness, finding that, “[w]hile Team STARGATES documented that it ‘current[ly] provides’ support to IWS 5.0, the proposal too often failed to explain why Team STARGATES was uniquely able to execute this tasking, other than by asserting incumbent status.” AR, Encl. 8, TET Report, at 5-6. The evaluators explained that “[t]hough the proposal addressed the tasking at a high level, the RFP stated that Offerors shall assume that the Government has no prior knowledge of its facilities, capabilities, or experience.” *Id.*, *citing* RFP at 98. The evaluators included a table identifying eight examples from Stargates’s proposal, and noting that the examples “highlight[ ] a few instances where the proposal asserted incumbent status supported by few supporting details to support findings without relying on prior evaluator experience with Team STARGATES facilities, capabilities, or experience[.]” See, e.g., AR, Encl. 8, TET Report, at 5-6, *citing* Stargates Tech. Proposal, at I-5 (“Team STARGATES will continue to provide support in the areas of cyber security, system engineering, design solutions, testing, and training for the IWS 5.0 Advanced Development (AxB) and sensor programs.”); *id.* at I-6 (“[DELETED].”); *and id.* at I-13 (“[DELETED].”).

The protester disagrees with the Navy’s assignment of this weakness. The protester argues that Stargates’s proposal “provided all required material” to meet the requirement and demonstrate that it is uniquely able to execute the tasking. Protest at 19. In support of its position, the protester cites to several examples in Stargates’s proposal that it identifies as “significant successes, provided at the unclassified level that the proposal allowed.” *Id.* One example cited by the protester concerns Stargates’s involvement in the development of [DELETED]. Specifically, the provision in Stargates’s proposal, quoted by the protester, states the following:

This culminated in [DELETED]. An event that [DELETED]. This methodology ultimately will deliver a better [DELETED] at a lower cost for IWS 5.0.

AR, Encl. 3, Stargates Proposal at I-21. In the protester’s view, this statement demonstrates that Stargates is uniquely able to provide “[u]nmatched [DELETED] [e]xpertise[.]” which was critical in delivery of [DELETED].” Protest at 19. The protester contends that this statement, along with its other examples, disproves the conclusion of the evaluators that Stargates’s proposal failed to demonstrate why it was “uniquely able to execute this tasking,” other than by asserting incumbent status.

In response, the agency, as an initial matter, points out that in challenging this weakness, Stargates’s initial protest fails to address the numerous examples cited by the TET in its evaluation as support for the Navy’s determination that Stargates’s response failed to articulate how Stargates is uniquely able to execute the required tasking beyond asserting its incumbency status. MOL at 8. Instead, the protester

points to other examples in Stargates's proposal, which it asserts satisfied the requirement and were ignored by the agency.

The agency reiterates that the "issue with Stargates' proposal is not that it did not offer examples of how it is uniquely able to execute the tasking of the SOW," but that "far too often, the only support [Stargates] offered was its role as the incumbent." MOL at 12. The agency notes that, even the "examples provided by Stargates from its proposal," mostly "just highlight things it has provided in the past but offers no elaboration about how Stargates is uniquely able to execute this tasking in the future." *Id.* The agency maintains that Stargates's proposal "relies heavily on its role as the incumbent and incorrectly assume[s] that it is the only [c]ontractor capable of executing this tasking." *Id.* The agency asserts that the TET considered this "lack of detailed information in supporting their proposal a flaw that increases the risk of unsuccessful performance." *Id.*

We conclude that the record supports the reasonableness of the agency's evaluation. As previously noted, it is an offeror's responsibility to submit a well-written proposal, with adequately detailed information that clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. *Hallmark Capital Grp., LLC, supra.* Simply citing incumbent status or experience is not sufficient in this regard. The RFP required that the offeror "provide sufficient details and convincing rationale that address how the Offeror intends to meet the requirements." RFP at 98. To the extent the protester contends that its proposal was sufficient, or should have been interpreted differently, the protester's disagreement, without more, is insufficient to establish the agency's evaluation was unreasonable. *Ben-Mar Enters., Inc., supra.* On this record, we find no basis to sustain the protest.

### Cost Realism

Stargates argues that the Navy unreasonably evaluated the realism of KMS's proposed costs. The protester contends that the cost realism assessment was deficient because the Navy should have considered other information, such as incumbent costs, rather than verified payroll and historical pricing data, for the awardee and its subcontractors. For the reasons discussed below, we find the protester's arguments provide no basis to sustain the protest.

When an agency evaluates a proposal for the award of a cost-reimbursement contract or task order, the offeror's proposed costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. Federal Acquisition Regulation (FAR) 15.404-1(d), 16.505(b)(3); see *CSI, Inc.; Visual Awareness Techs. & Consulting, Inc., B-407332.5 et al.*, Jan. 12, 2015, 2015 CPD ¶ 35 at 5-6. Consequently, the agency must perform a cost realism analysis to determine the extent to which the offeror's proposed costs are realistic for the work to be performed. FAR 15.404-1(d)(1); see *Noridian Admin. Servs., LLC, B-401068.13*, Jan. 16, 2013, 2013 CPD ¶ 52 at 4. An agency's cost realism analysis requires the exercise of informed judgment, and we review an agency's judgment in this area only to

see that the cost realism analysis was reasonably based and not arbitrary. See *Cascade Gen., Inc.*, B-283872, Jan. 18, 2000, 2000 CPD ¶ 14 at 8.

The Navy provided extensive instructions to offerors regarding the submission of their cost proposals. As relevant here, the RFP specified the labor categories and labor hours that offerors were required to propose.<sup>10</sup> RFP at 91; 101. Offerors were then to submit proposed direct labor rates and escalation, indirect rates, and profit/fee, based on the RFP's specified labor categories and hours. RFP at 104. Offerors were also instructed to provide payroll verification for current employees and letters of intent for contingent hires. In addition, offerors were required to submit either cost and pricing data, or fixed rates and prices, for their proposed subcontractors, depending on the type of contract between the offeror and its subcontractor. RFP at 108. Subcontractors with cost-reimbursement contracts were also required to submit cost proposals (showing direct labor rates, indirect rates, and fee rate). *Id.* Subcontractors with time-and-materials (T&M) and/or fixed-price contracts were not required to submit cost proposals. *Id.*

The RFP established that the Navy would perform a cost realism analysis, in which proposed costs could be adjusted to reflect the government's estimate of the most probable cost of performing this task order. *Id.* at 104, 117. The RFP notified offerors that their proposed costs would be adjusted upward if their direct labor or indirect rates were determined unrealistic. *Id.* The RFP explained that the offerors bore the burden of establishing cost credibility and identified acceptable documentation for establishing direct labor and indirect rates. *Id.* at 104.

KMS's cost proposal used the labor categories and hours set forth in the solicitation. AR, Encl. 14, KMS Cost Realism Report, at 12; Encl. 11, KMS Staffing Proposal Narrative, at 1. KMS, including its subcontractors, proposed direct labor rates based on actual salaries for current employees. *Id.* KMS also submitted payroll verification information for all direct labor rates. AR, Encl. 13, KMS Price Proposal, at 2-3. When proposing contingent hires, KMS and its subcontractors submitted letters of intent. *Id.* at 1. In support of indirect rates, KMS and its subcontractors submitted three years of historic actual rates, as well as Defense Contract Audit Agency and Defense Contract Management Agency provisional rates. *Id.* at 4.

In evaluating KMS's cost proposal, the cost evaluation team (CET) verified KMS's payroll information data for all but two proposed direct labor rates, and found the direct labor rates based on actual salaries to be realistic. AR, Encl. 14.0, KMS Cost Realism Report at 13-14. For the two proposed rates that lacked payroll information data, the Navy compared the rates with the average proposed direct labor rates for the corresponding labor categories. Although the CET noted "moderate cost risk," the CET ultimately accepted the rates given, finding that they were generally comparable with the substantiated proposed rates of those in the same labor category. *Id.* at 14; AR, Encl. 7, SSDD, at 10. The CET found that KMS's proposed base year escalation was

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<sup>10</sup> Offerors were required to map their labor categories to those specified in the RFP.

not realistic and upwardly adjusted the rate for the base year to the solicitation's 2.43 percent escalation rate. AR, Encl. 14, KMS Cost Realism Report, at 13; RFP at 2-3. The CET also found KMS's proposed general and administrative (G&A) rate was unsupported and adjusted it upward to the average of the actual incurred G&A rates. *Id.* at 16. The agency also made several upward adjustments to KMS's subcontractors proposed escalation rates.

Stargates contends that the Navy's cost realism evaluation was unreasonable because the agency did not compare KMS's rates to "other offerors, incumbent contractors, salary surveys, government estimates or any other objective source."<sup>11</sup> Supp. Comments & 2nd Supp. Protest at 10. The protester asserts that Stargates's proposed subcontractor rates "were those used for the actual personnel and rates supporting [the incumbent contract] today," while for KMS, the evaluation "reflects no consideration of the historical or incumbent costs for the protested work, or any other reasonable

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<sup>11</sup> The protester also contends that the agency failed to reasonably assess the difference in the offerors' proposed costs. In this regard, the protester notes that "KMS proposed using cost reimbursement type subcontracts[,] while STARGATES proposed time and material type subcontracts[.]" Supp. Comments & 2nd Supp. Protest at 8. The protester points to a statement in the SSDD highlighting that the "biggest cost delta between KMS and STARGATES is related to STARGATES' proposed approach to have all its six (6) subcontractors under Time and Material (T&M) contract types which means that STARGATES' proposed subcontractors only provided fully burdened labor rates." AR, Encl. 7, SSDD, at 11. The protester asserts that this difference between the offerors' proposed costs "indicates that KMS relies heavily on cost reimbursement subcontracts with unrealistic labor rates or overhead," and that the agency ignored the "higher cost risk" associated with the KMS proposal. Supp. Comments & 2nd Supp. Protest at 9; Comments at 4.

We, however, find the record does not support the protester's allegations. As previously noted, and as the protester acknowledges, the solicitation permitted offerors to select cost-reimbursement or T&M/fixed-price subcontracts. RFP at 108. Stargates opted to use T&M contracts for all of its subcontracts. The record reflects that in the source selection decision, the SSA explained that, in light of Stargates's use of T&M subcontracts, Stargates's "proposed subcontractors only provided fully burdened labor rates" which "do not separate direct labor and indirect labor costs[.]" Therefore, per the terms of the solicitation, "the CET did not adjust the proposed T&M rates because in a T&M arrangement the proposed fixed rates would be incorporated into the resultant Task Order upon award." AR, Encl. 7, SSDD, at 11; RFP at 108. To the extent the protester asserts that the difference in the subcontract vehicle selected by the offerors indicated that the awardee's proposal relied on unrealistic proposed rates, as discussed in detail above, we find that the agency's cost realism evaluation of the awardee's proposal was reasonable and in accordance with the solicitation. The record also demonstrates that the SSA acknowledged the subcontract type to be used by each offeror and the cost implications of each. *Id.* On this record, we find no basis to sustain the protest.

benchmark.” *Id.* The protester argues that it was prejudiced because “KMS proposed costs substantially below incumbent rates and likely far below any reasonable government estimate.” *Id.* at 11. The agency argues that its cost realism evaluation was reasonable and consistent with the terms of the solicitation.

We find that the Navy’s cost realism evaluation of KMS’s proposal was reasonable. The record demonstrates that the Navy analyzed both the direct and indirect rates that KMS proposed including the sufficiency of the supporting information. As detailed above, KMS provided payroll verification information for each current employee and letters of intent for the contingent hires. The CET verified KMS’s payroll information data and found the direct labor rates based on actual salaries to be realistic. For the two current, named KMS employees who were proposed without sufficient substantiating documentation, the CET found the rates realistic based on a comparison to the substantiated proposed rates in the same labor categories. The CET also assessed indirect rates and made upward adjustments when the CET found the rates were not justified. See, e.g., AR, Encl. 14, KMS Cost Realism Report, at 13 (upwardly adjusting KMS’ proposed base year escalation rate; *id.* at 16 (upwardly adjusting KMS’ proposed G&A rates).

The Navy’s evaluation in this regard was consistent with the solicitation, which notified offerors that “[p]ertinent cost information,” such as “payroll information,” “letters of intent,” and Defense Contract Audit Agency (DCAA) recommended indirect rates, would be used to determine the most probable cost of contract performance. RFP at 105-106; 117. Although the protester asserts the cost realism evaluation of KMS’s proposed costs was unreasonable because the agency failed to compare the awardee’s proposed costs to other information, such as incumbent costs, 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. *Raytheon Co.*, B-417731, B-417731.2, Oct. 3, 2019, 2019 CPD ¶ 350 at 5. Here, as described above, the agency performed a detailed and reasonable cost realism evaluation. To the extent the protester asserts that the agency’s cost realism evaluation was unreasonable, the protester’s disagreement with the agency’s judgment, without more, does not provide a basis to sustain the protest. See *TriCenturion, Inc.; SafeGuard Servs., LLC*, B-406032 *et al.*, Jan. 25, 2012, 2012 CPD ¶ 52 at 6. Based on this record, we find no basis to sustain the protest.

#### Bait-and-Switch

Stargates also argues that KMS’s proposal relied on an impermissible “bait and switch” of two key personnel that the awardee did not expect to use during contract performance. In support of this argument, Stargates points to job listings placed by KMS on its website after the award. Comments & Supp. Protest, attach. A & B. As

discussed below, we find the protester's allegations provide no basis to sustain the protest.

A protester's argument that the key personnel identified in an awardee's proposal will not perform under the resulting contract is generally a matter of contract administration that our Office will not review. Bid Protest Regulations, 4 C.F.R. § 21.5(c). To establish an impermissible bait and switch, a protester must show that a firm either knowingly or negligently represented that it would rely on specific personnel that it did not expect to furnish during contract performance, and that the misrepresentation was relied on by the agency and had a material effect on the evaluation results. *Data Mgmt. Servs. Joint Venture*, B-299702, B-299702.2, July 24, 2007, 2007 CPD ¶ 139 at 10. Even where there is evidence of a planned switch in key personnel, our Office will not find an impermissible bait and switch where there is no evidence of baiting, *i.e.*, an intent to replace proposed key personnel with less qualified personnel. *Id.*; *Dynamic Security Concepts, Inc.*, B-416013, B-416013.2, May 15, 2018, 2018 CPD ¶ 186 at 6.

The record does not support Stargates's contention that KMS engaged in an improper bait-and-switch. As required by the solicitation, the awardee's proposal included resumes for all of the awardee's proposed key personnel and letters of intent for all proposed personnel not currently employed by either KMS or its proposed subcontractors. AR, Encl. 11, KMS Staffing Narrative at 1. Although Stargates points to post-award job postings to support its allegation, such postings alone are not dispositive evidence of an intent to conduct a bait-and-switch. See *Target Media Mid Atl., Inc.*, B-412468.6, Dec. 6, 2016, 2016 CPD ¶ 358, at 8; *Invertix Corp.*, B-411329.2, July 8, 2015, 2015 CPD ¶ 197 at 6.

Furthermore, as noted above, our Office will not find an impermissible bait and switch where there is no evidence the offeror is replacing proposed key personnel with less qualified personnel. *Data Mgmt. Servs. Joint Venture, supra*. The protester does not allege that the awardee intends to replace the individuals designated in its proposal with less qualified ones. Rather, the vacancy announcements provided by the protester are for equally (or better) qualified employees. See Comments & Supp. Protest, attach. A & B; Supp. MOL at 8. Since the substitution of equally qualified individuals for the ones designated in a proposal could not have had a material effect on the evaluation results, such a substitution does not constitute an impermissible "bait and switch."<sup>12</sup> Accordingly, this protest ground is denied.

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<sup>12</sup> In addition, the RFP included the following evaluation language: "[t]he qualifications listed in each individual proposed Key Personnel resume, not the specific individual, are the materially relevant aspects of the proposed Key Personnel" and that "even if a proposed Key individual becomes unavailable to the Offeror between proposal submission and award, the Government will evaluate and make its award decision based on the qualifications listed on the proposed resume(s)." RFP at 116.

## Source Selection Decision

Finally, Stargates raises a number of arguments challenging the selection decision. The protester primarily contends that the Navy's selection decision was flawed because it relied on a defective technical and cost evaluation. The protester also asserts that the agency's selection decision failed to reasonably assess the difference in the offerors' proposed costs.

The Navy argues that it substantively considered the differences between the offerors' proposals and found that Stargates's technical and past performance advantage over KMS's proposal was not worth a price premium. Thus, the Navy contends it reasonably concluded that award to the lower-cost proposal would provide the best value to the government. MOL at 16-21. The agency contends that its selection decision was not only reasonable but also was entirely consistent with the solicitation, which specifically reserved to the agency the right to award to a lower-cost offeror when the offers were considered essentially equal, or when the specific strengths or benefits of a technically superior proposal did not warrant paying the associated cost premium. *Id.* We agree.

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 and 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. See *PricewaterhouseCoopers Pub. Sector, LLP*, B-415504, B-415504.2, Jan. 18, 2018, 2018 CPD ¶ 35 at 13. In reviewing protests of an agency's source selection decision, even in a task order competition as here, we do not reevaluate proposals but examine the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations. See *McKean Def. Grp., LLC*, B-415254.2, Dec. 19, 2017, 2017 CPD ¶ 389 at 5. Where, as here, technical merit is significantly more important than cost, an agency may properly select a lower-cost, lower-rated proposal if it reasonably decides that the cost premium involved in selecting a higher-rated, higher-cost proposal is not justified. *Booz Allen Hamilton Inc.*, B-412744, B-412744.2, May 26, 2016, 2016 CPD ¶ 151 at 12.

As discussed in the background section of this decision, Stargates's proposal was rated "good" for both technical factors and "substantial confidence" for past performance; KMS's proposal was rated "acceptable" for the technical/management factor, "good for the staffing plan/personnel factor, and "satisfactory confidence" for past performance. AR, Encl. 7, SSDD at 4. Stargates's total evaluated cost was \$71,621,046; KMS's was \$52,536,654. *Id.*

After reviewing all of the discriminators between proposals, the SSA determined that Stargates's proposal had a "slight advantage"<sup>13</sup> under the technical/management factor based on its "expertise across the IWS 5.0 portfolio and processes" and that KMS "put forward an acceptable proposal." *Id.* at 8, 12. The SSA found that, for the staffing plan/personnel factor, "both offerors, qualitatively, have offsetting strengths, with STARGATES having a slight edge with the added credentials of its System Engineers." *Id.* at 12. The SSA concluded, for past performance, that Stargates "continues to maintain its slight advantage over KMS given its very relevant efforts, including the predecessor contract for this solicitation." *Id.* In considering the total evaluated cost, the SSA explained that, "even if the [Cost Evaluation Team] CET didn't make any adjustments to STARGATES proposed costs," KMS's proposal "presents the best overall benefit at the lowest [cost]." *Id.* The SSA determined that "[u]ltimately, 'STARGATES' marginally slight advantage in Factors 1, 2, and 3 does not outweigh KMS' substantially lower [total evaluated costs] in Factor 4." *Id.* The SSA found that STARGATES "slight superior technical capability" is not worth "an additional 36.33% premium (~\$19M)" and therefore, concluded that, "as contemplated by the solicitation, does not present as the best value to the Government." *Id.*

Based on this record, we find nothing unreasonable regarding the SSA's conclusions. Contrary to the protester's argument, the record shows that the SSA recognized that there were unique aspects in each offeror's proposal. Moreover, as discussed above,

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<sup>13</sup> At a different place in the selection decision, the SSA states that Stargates has a "distinct" technical advantage over KMS for the technical/management factor, rather than a "slight" advantage. AR, Encl. 7, SSDD at 8. The protester argues that the SSA's finding that its advantage over KMS under this technical factor was only "slight" demonstrates that the selection decision was "materially flawed, internally inconsistent and thus unreasonable." Supp. Comments & 2nd Supp. Protest at 12. We disagree.

As discussed herein, the record reflects that the SSA conducted a meaningful and substantive comparison by weighing the underlying merits of the non-price and price evaluation factors; carefully documented in considerable detail her findings that were either offsetting and/or discriminators; and consistent with the evaluation criteria, reasonably concluded that Stargates's proposal held a "marginally slight advantage in Factors 1 and 2." SSDD at 12. To the extent the protester asserts that its proposal merited a substantial advantage, rather than a "distinct" or "slight" advantage under the technical/management factor based on the strengths assessed by the agency, "a protester's disagreement with the agency's determinations as to the relative merits of competing proposals, or disagreement with its judgment as to which proposal offers the best value to the agency, without more, does not establish that the source selection decision was unreasonable." *Pacific-Gulf Marine, Inc.*, B-415375, B-415375.2, Jan 2, 2018, 2018 CPD ¶ 124 at 7. We find no merit to the protest allegation.

the record does not support Stargates's challenges to the agency's technical and cost realism evaluations. Accordingly, we find no merit to the protester's objections to the tradeoff decision on this basis.

The protest is denied.

Thomas H. Armstrong  
General Counsel