

DOCUMENT FOR PUBLIC RELEASE

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

Decision

Matter of: Booz Allen Hamilton, Inc.

File: B-420098; B-420098.2; B-420098.3

Date: December 1, 2021

Kristen E. Ittig, Esq., Stuart W. Turner, Esq., and Anna L. Dykema, Esq., Arnold & Porter Kaye Scholer LLP, for the protester.
J. Scott Hommer, III, Esq., Rebecca E. Pearson, Esq., Taylor A. Hillman, Esq., Christopher G. Griesedieck, Esq., Lindsay M. Reed, Esq., and Caleb E. McCallum, Esq., Venable, LLP, for Leidos, Inc., the intervenor.
Rebecca Tatum, Esq., Erika Whelan Retta, Esq., Isabelle P. Cutting, Esq., and Sean B. Brady, Esq., Department of the Air Force, for the agency.
Michael Willems, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency evaluation of proposals and tradeoff decision is denied where the evaluation and tradeoff decision were reasonable and consistent with the terms of the solicitation.

DECISION

Booz Allen Hamilton (BAH), Inc., of McLean, Virginia, protests the issuance of a task order to Leidos, Inc., of Reston, Virginia, pursuant to fair opportunity procurement request (FOPR) No. FA8730-21-F-0113, under the General Services Administration's (GSA) One Acquisition Solution for Integrated Services (OASIS) multiple award, indefinite-delivery, indefinite-quantity contract for engineering services. The protester alleges that the agency erred in its evaluation and in the conduct of its best-suited offeror tradeoff decision.

We deny the protest.

BACKGROUND

The FOPR seeks to procure engineering and integration support for the Air Force's "Medusa" system, which provides the capability to detect, identify, track, and defeat small unpiloted aerial systems, as well as rockets and mortars. Agency Report (AR), Tab 1, Contracting Officer's Statement (COS) at 2. The effort includes both system

integration and software development necessary to add various new capabilities to Medusa. *Id.*

On June 17, the agency issued the FOPR using the procedures in Federal Acquisition Regulation subpart 16.5 via GSA's e-Buy platform. COS at 3. The FOPR included detailed instructions for proposal preparation (IFPP) that set out three evaluation factors: technical approach, management approach, and cost/price. AR, Tab 7, IFPP at 7. The technical approach factor was divided into five subfactors: (1) software project engineering, (2) hardware project engineering, (3) site project engineering, (4) technical planning services, and (5) sample problem. *Id.* The IFPP explained that, in selecting the best-suited offeror, the technical approach was more important than management approach or cost/price. *Id.* at 10. However, the IFPP also noted management approach and cost/price would "contribute substantially" to the selection decision. *Id.*

Relevant to this protest, the IFPP provided a sample threat scenario, and instructed offerors to explain how they would address it using their unique technical approach. *Id.* at 8-9. Additionally, the IFPP included the following instructions for responding to the sample problem:

The Company will be evaluated based on their demonstration of creative thinking to reach a reasonable response/solution, the soundness and resourcefulness of their methodology, and their ability to tell a complete story. The sample problem response/solution must demonstrate direct correspondence with the offeror's proposed approach in accordance with the Technical Volume in the above problem, creativity is considered as a demonstration of the Offeror's ability to integrate new ideas into existing processes, or to use existing technologies or methodologies in new or unique ways. The demonstration of creativity should offer insight into the Offeror's thought processes and decision making approach, *i.e.*, what sets them apart.

AR, Tab 7, IFPP at 8.

Additionally, the IFPP provided detailed instructions for submission of cost/price proposals. *Id.* at 12-14. Of note, the solicitation specified offerors "shall submit" a cost and price format workbook using a provided template for various projects that included preset labor categories, government full-time equivalents or labor-hours per project, and a best estimated quantity (BEQ) of projects of a given type. *Id.* For example, the IFPP required offerors to fill in the template for certain contract line items by including their fully burdened labor rates and proposed hours. *Id.* at 13. Importantly, the IFPP provided that the contractor's proposed hours "should equal" the preset government hours per project, and noted equations were included in the template to multiply the estimated single project cost by the BEQ to calculate the estimated total cost to the government. *Id.*

The agency received five proposals in response to the FOPR, and concluded three of those proposals were potentially suitable for award, including proposals from the protester and intervenor. AR, Tab 16, Fair Opportunity Decision Document at 8. The agency evaluated the protester’s and intervenor’s proposals as follows:

	BAH	Leidos
TECHNICAL APPROACH		
Software Project Engineering	Minor Impact-Positive	Minor Impact-Positive
Hardware Project Engineering	Minor Impact-Positive	Minor Impact-Positive
Site Project Engineering	No Impact	No Impact
Technical Planning Services	Minor Impact-Positive	Minor Impact-Positive
Sample Problem	No Impact	Major Impact-Positive
MANAGEMENT APPROACH	Major Impact-Positive	No Impact
COST/PRICE	\$77,077,391	\$82,713,792

Id.

On the basis of the underlying evaluation findings, the fair opportunity decision authority, noted Leidos’s proposal was meaningfully technically superior to the other offerors, because it creatively leveraged modern technology and commercial methodologies. *Id.* For example, the Decision Authority explained that Leidos’s sample problem approach implemented “more engineering rigor earlier in the process,” and that Leidos’s technical approach would result in, among other things, fielding capabilities faster, minimizing costly rework, and providing “greater value” from each dollar spent. *Id.* at 8-9. The Decision Authority concluded Leidos’s proposed approach represented an increased “return on investment” that would lessen risk to cost, schedule, and performance, and that this technical advantage “amply justified” paying a slightly higher price. *Id.*

Accordingly, the agency issued the task order to Leidos on August 12, 2021, and notified unsuccessful offerors on August 13. COS at 10, 12. The protester requested and received a debriefing, and this protest followed.¹

DISCUSSION

The protester challenges the agency’s evaluation of the awardee’s proposal and the agency’s tradeoff decision. Principally, the protester contends the awardee’s proposal

¹ The protested task order is valued at more than \$10 million and was issued under GSA’s OASIS multiple-award contract. Accordingly, our Office has jurisdiction to consider the protest. 41 U.S.C. § 4106(f).

failed to address material solicitation requirements, and the agency's tradeoff decision was inconsistent with the terms of the solicitation and the proposals in numerous respects. See Protest at 16-33; Comments and First Supp. Protest at 3-19; Comments and 2nd Supp. Protest at 18-21.

As a preliminary matter, we note it is not clear that the protester is an interested party to raise these challenges. The agency and intervenor argue the protester's proposal was unawardable because it failed to include mandatory information required by the solicitation. AR, Tab 34, at 16-17; Intervenor's 2nd Supp. Comments at 3-7. Accordingly, the agency and intervenor contend that the protester is not an interested party to challenge the award in this case. *Id.*

In this regard, the solicitation specified that offerors "shall submit" a cost and price format workbook using a provided template, and explained that the contractor's total proposed hours per project should equal the preset government hours per project provided in the template. AR, Tab 7, IFPP at 12-13. Relevant here, the cost template provided preset government hours for certain hardware project types, but those project types had a BEQ of zero. See, e.g., AR, Tab 9, Cost Workbook at 6. That is to say, the government estimated it might order zero projects of that type, but nonetheless provided hours per project so that offerors could propose a labor mix and price for such projects. *Id.* In questions and answers about the procurement, several offerors inquired about the preset government provided hours in the templates. AR, Tab 10, Questions and Answers at 1. In response, the agency indicated offerors "shall propose the exact value" of hours per project provided and that the expectation was that offerors would "justify their distribution of hours across the four labor categories." *Id.*

Crucially, for the two project types where the agency template included a BEQ of zero, the protester proposed zero labor hours in any category, even though the template required offerors to allocate 4800 labor hours across four labor categories for such projects. See AR, Tab 22, BAH Cost Workbook, Contract Line Item Number (CLIN) X002 B-Table. This appears to be a clear failure to provide specific information required by the IFPP.

The protester argues this amounts to a *post hoc* reevaluation of its proposal and that the agency has already concluded that the protester's proposal was technically acceptable. 2nd Supp. Comments at 9 n.2. The protester maintains the agency, in effect, adopted a less stringent reading of the solicitation that permitted offerors to either propose a labor distribution or propose no hours for projects with a BEQ of zero. *Id.* Moreover, even if the agency erred in this respect, BAH contends there was no competitive harm as projects with a BEQ of zero were not included in an offeror's total evaluated price, so the error did not affect the agency's tradeoff decision. *Id.*

We recognize that the agency did not identify the problem with BAH's proposal as part of its contemporaneous evaluation and the agency has raised this concern for the first time in the heat of protest litigation. Nonetheless, the record clearly establishes that BAH's proposal failed to conform to a clearly stated solicitation requirement. Although

the protester suggests that the agency is now seeking to back track on what the protester suggests must have been a prior less stringent reading of the solicitation by the agency, we see no reasonable room for a more permissive interpretation of the solicitation. The solicitation clearly required offerors to propose hours for all the projects, even those with a BEQ value of zero, yet the protester proposed zero labor hours. Instead, it appears that the agency simply overlooked the protester's clear failure to follow the terms of the solicitation during its initial evaluation. Our decisions have consistently concluded clearly stated solicitation requirements are material to the needs of the government, and a proposal that fails to conform to such material terms is unacceptable, and may not form the basis for award. See, e.g., *Leader Communications, Inc.*, B-413104.9, Mar. 17, 2017, 2017 CPD ¶ 96 at 5.

We are also not persuaded that the protester's proposal as submitted met the agency's actual needs without prejudice to other offerors. For example, the protester argues its non-compliance was harmless because it did not affect the protester's total evaluated price and therefore did not factor in to the tradeoff decision. However, the agency notes that, while the government's BEQ for those project categories was zero, the project pricing was requested to effectively create pre-priced options "to calculate what the cost to the government will be" for future needs that may arise. See 2nd Supp. COS/MOL at 7 (*citing* AR, Tab 7, IFPP at 13). Had the agency made award to the protester, the agency would now be in the unenviable position of having to negotiate pricing for those two project categories under an already awarded contract. *Id.* at 16-17

Given the protester's clear failure to submit a compliant proposal, it is not apparent that the protester is an interested party to pursue its claims in this case. *But see, Boeing Sikorsky Aircraft Support*, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15 (explaining that our Office generally gives little or no weight to reevaluations and judgments prepared in the heat of the adversarial process). However, even assuming that the protester is an interested party, we find the protest grounds to be substantively without merit. We address representative arguments below.²

² The protester raises other collateral arguments that are not addressed in this decision. While we do not address all the protester's arguments, we have considered them and conclude that they provide no basis to sustain the protest. For example, the protester argues that the agency erred in its tradeoff by failing to "look behind" certain adjectival ratings because certain negative observations in Leidos's technical evaluation were not carried forward into the technical evaluation team's briefing for the Decision Authority or the Decision Document. See Comments and First Supp. Protest at 12-15.

The agency has explained that the evaluation team, and later the Decision Authority, reviewed the entire evaluation record and concluded that certain observations were not significant differentiators between the offerors, and that less significant evaluation findings were not carried forward into the final evaluation briefing for the Decision Authority or the Decision Document. Additionally, we note that several negative observations about both the protester and the awardee were not carried forward into the briefing or the Decision Document, both of which instead noted that there was "nothing

Awardee's Proposal

First, the protester argues the awardee's proposal failed to address material requirements of the solicitation because the awardee's case study proposal did not fully respond to the solicitation's problem statement. Comments and First Supp. Protest at 2-6. The protester contends the solicitation posed a general problem that required offerors to provide answers that would address this problem in various circumstances. *Id.* The awardee, instead, addressed the problem in a highly specific scenario of its own invention, but did not address how it would resolve other scenarios that were also logically encompassed by the solicitation's problem statement. *Id.* Accordingly, the protester maintains the awardee took exception to the requirements of the solicitation and should have been ineligible for award. *Id.*

The evaluation of technical proposals is generally a matter within the agency's discretion, which our Office will not disturb unless they are shown to be unreasonable or inconsistent with the solicitation's evaluation criteria. *American Systems Corp.*, B-413952.3, B-413952.4, June 23, 2017, 2017 CPD ¶ 204 at 6-7; *NCI Information Systems, Inc.*, B-412680, B-412680.2, May 5, 2016, 2016 CPD ¶ 125 at 7; *ORBIS Inc.*, B-408033.2, June 3, 2013, 2013 CPD ¶ 140 at 6.

Here, the solicitation required offerors to address the following sample problem statement:

The Air Force has observed that bad actors are now flying [small unpiloted aerial vehicles] differently and in some cases avoiding detection, resulting in reduced Medusa system effectiveness in combatting the [small unpiloted aerial vehicle] threat putting our forces at increased risk.

AR, Tab 7, IFPP at 8.

The solicitation offered no further factual details, but asked offerors to explain how they would address the new, evolving threat. *Id.* The solicitation also stressed that offerors would be evaluated based on their "demonstration of creative thinking," the "soundness and resourcefulness of their methodology," and their ability to "tell a complete story." *Id.* The solicitation provided no guidance about the level of specificity or abstraction that offerors should use in addressing the sample problem, but the solicitation limited technical volume as a whole to 20 pages. *Id.* at 4.

significant to report" for those evaluation factors or sub-factors. See AR, Tab 16, Decision Document at 3-4. In this case, the briefing to the Decision Authority served as the final consensus recommendation of the evaluation team, and it is entirely unobjectionable for evaluation teams to winnow findings as they reach a final consensus recommendation. We see no basis to conclude the agency erred in this respect.

The awardee addressed the sample problem by creating a hypothetical scenario that incorporated all the facts provided by the solicitation. AR, Tab 12, Leidos Technical Volume at 2. Specifically, Leidos created a narrative that described a new type of small unpiloted aerial vehicle threat behaving in an unusual way and avoiding detection at a specific air base, creating a threat to Air Force personnel. *Id.* The awardee identified and addressed several constraints posed by its chosen location that would not necessarily be applicable to other sites. *Id.* at 2-3. For example, because the awardee chose a base with an active airfield, certain [DELETED] counter measures were not appropriate because they would either be ineffective or would negatively affect airfield operations. *Id.*

The protester objects that the awardee, in effect, narrowed the scope of the sample problem to the awardee's advantage. Comments and First Supp. Protest at 2-6. By posing the problem in a general way, the protester contends, the solicitation was asking offerors to address the problem generally, rather than in a highly specific manner. *Id.* Moreover, the protester notes that the specific location and constraints chosen by the awardee highlight specific technical features of the awardee's proposal, while neglecting other possible scenarios that it might be less equipped to address. *Id.*

We reject the protester's argument that Leidos's uniquely designed case study approach deviated from the terms of the solicitation. The solicitation did not require offerors to provide a generalized approach that could apply to any imaginable scenario; nor did it require offerors to address all potential scenarios. AR, Tab 7, IFPP at 8. Rather, the solicitation asked offerors to address the problem statement creatively and in a way that aligned with their technical proposal. *Id.* Moreover, the solicitation stressed that offerors would be evaluated, in part, on their ability to "tell a complete story." *Id.* Given the latitude afforded by the solicitation to respond to the case study, we have no basis to question the agency's conclusion that the awardee's proposal created a concrete, narrative example that was fully consistent with the problem statement, and provided a solution that specifically aligned with its technical proposal.

Moreover, contrary to the protester's suggestion, the facts in this case are distinguishable from our decision in *Compuline Int'l, Inc.*, B-408379, July 19, 2013, 2013 CPD ¶ 178. In *Compuline*, we concluded that an agency correctly rejected a proposal that failed to address several solicitation requirements and entirely omitted required sections of its proposal, including its cost proposal. In this case, Leidos responded directly to the solicitation's requirements but simply furnished additional consistent facts in responding to a hypothetical scenario. This is unobjectionable in light of the solicitation's encouragement of creativity in responding to the sample problem.

Tradeoff Decision

Next, the protester argues that the agency's tradeoff decision was flawed in several respects. First, the protester contends that the agency treated offerors unequally by emphasizing negative features of the protester's proposal while ignoring identical features in the awardee's proposal. Comments and First Supp. Protest at 12-15.

Second, the protester maintains that the agency applied an unstated evaluation criterion by evaluating “return on investment” and that, in any case, the agency’s return on investment analysis was flawed in numerous respects. Protest at 20-29; Comments and First Supp. Protest at 6-12. Third, the protester argues the agency’s tradeoff decision gave overwhelming weight to a single technical sub-factor, failed to adequately document the tradeoff, and ignored management approach and cost, contrary to the requirements of the solicitation. Protest at 16-20; Comments and 2nd Supp. Protest at 18-20. For the reasons discussed below, these arguments are without merit.

Disparate Treatment

The protester argues that the agency treated offerors unequally by criticizing the protester’s proposal for certain features, while ignoring identical failures in the awardee’s proposal. Comments and FirstSupp. Protest at 12-15. Specifically, the protester notes that the evaluators made several negative observations about both proposals under technical subfactor 1.5 related to performance work statement (PWS) section 3.1, System Engineering Services. *Id.* For example, the evaluators noted that both proposals demonstrated an “inadequate approach” to section 3.1, and specifically identified a failure to address the same three PWS subsections (3.1.4, 3.1.7, and 3.1.8). *Id.* (*citing* AR, Tab 14, Leidos Technical Evaluation at 5-6 and Tab 16, Decision Document at 3). Yet, the protester alleges the Decision Document mentions only the protester’s failure to address these PWS requirements, and makes no mention of the awardee’s failure to address the same requirements. *Id.*

It is a fundamental principle of federal procurement law that a contracting agency must treat all competitors equally and evaluate their submissions evenhandedly against the solicitation’s requirements and evaluation criteria. *Rockwell Elec. Commerce Corp.*, B-286201 *et al.*, Dec. 14, 2000, 2001 CPD ¶ 65 at 5. However, when a protester alleges unequal treatment in a technical evaluation, it must show that the differences in the evaluation did not stem from differences between the quotations or proposals. *IndraSoft, Inc.*, B-414026, B-414026.2, Jan. 23, 2017, 2017 CPD ¶ 30 at 10; *Paragon Sys., Inc.; SecTek, Inc.*, B-409066.2, B-409066.3, June 4, 2014, 2014 CPD ¶ 169 at 8-9. Accordingly, to prevail on an allegation of disparate treatment, a protester must show that the agency unreasonably downgraded its proposal for deficiencies that were substantively indistinguishable from, or nearly identical to, those contained in other proposals. *Office Design Group v. United States*, 951 F.3d 1366, 1372 (Fed. Cir. 2020); *Battelle Memorial Inst.*, B-418047.3, B-418047.4, May 18, 2020, 2020 CPD ¶ 176 at 5.

Here, the protester is correct--the underlying evaluation concluded that both offerors did not effectively address certain requirements of PWS 3.1, but the Decision Document only mentions this shortcoming with respect to the protester’s proposal. In response, the agency argues that the Decision Authority was aware that the two offerors were equivalent in this regard, but the Decision Authority did not consider these negative observations to be significant. AR, Tab 32, Supp. COS/MOL at 22-25. The agency argues that the inclusion of this negative observation in the Decision Document was, in effect, an error that did not competitively prejudice the protester. *Id.* The

contemporaneous record supports the agency's position.

The contemporaneous technical evaluations, which the Decision Authority reviewed and adopted, made clear that both offerors' proposals demonstrated an inadequate approach to the requirements of PWS 3.1. See AR, Tab 13, BAH Technical Evaluation at 2-4; AR, Tab 14, Leidos Technical Evaluation at 2-5. Moreover, while the Decision Document includes a negative remark about the protester, but not the intervenor, the negative remark is inconsistent with other portions of the Decision Document, supporting the agency's assertion that the remark was included in error.

Specifically, the negative remark concerning the protester's approach to PWS 3.1 is followed by text directing the reader to "see the first negative observation" concerning sub-factor 1.5 in BAH's technical evaluation. AR, Tab 16, Decision Document at 3. However, the Decision Document includes a list of positive and negative observations on the following page, in which there are no negative observations concerning BAH under technical sub-factor 1.5. *Id.* at 4. Instead, the Decision Document merely indicates that there were no significant negative observations to report concerning sub-factor 1.5. *Id.* That is to say, while the narrative summary of the evaluation included a reference to a negative observation concerning BAH, the substance of that negative observation was not actually included in the Decision Document, and the tradeoff discussion did not treat this negative observation as a differentiator between the offerors.

We conclude that the minor inconsistency in the record here, taken together with the other contemporaneous evidence discussed above, supports the agency's argument that the inclusion of this negative observation concerning the protester, was, at best, an error that did not competitively prejudice the protester. Competitive prejudice is an essential element to every viable protest, and where an agency's improper actions did not affect the protester's chances of receiving award, there is no basis for sustaining the protest. See, e.g., *American Cybernetic Corp.*, B-310551.2, Feb. 1, 2008, 2008 CPD ¶ 40 at 2-3. Accordingly, we see no basis to conclude that the agency engaged in inappropriate disparate treatment.

Return on Investment

Next the protester contends that the agency erred in several respects when it concluded that the awardee represented a better "return on investment." First, the protester contends that this assessment was an unstated evaluation criterion, and was an unannounced and impermissible cost analysis. Protest at 20-29. Second, the protester contends that, even if "return on investment" were appropriately considered, the agency erred in the analysis underpinning that conclusion. Comments and First Supp. Protest at 6-12. For example, the protester argues the agency unreasonably concluded that Leidos would provide more expert engineering hours early in the contract. According to the protester, these additional expert engineering hours were illusory. Comments and 2nd Supp. Protest at 3-13. Similarly, the protester argues the agency unreasonably concluded that the awardee's higher labor rates would attract superior staff. According

to the protester, to reach this conclusion the agency considered only fully burdened rates; however, fully burdened rates the protester argues, are not an appropriate proxy for direct compensation. Comments and First Supp. Protest at 6-12. BAH also maintains that the agency unreasonably understood Leidos's higher price to be based on its utilization of expert engineers throughout the contract, when Leidos, at best, only proposed increased expert engineering support in the early years of contract performance. *Id.*

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. *Booz Allen Hamilton Inc.*, B-414283, B-414283.2, Apr. 27, 2017, 2017 CPD ¶ 159 at 13-14. 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 were reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations. *Intelligent Waves LLC*, B-416169, B-416169.2, June 12, 2018, 2018 CPD ¶ 211 at 12.

Here, the Decision Document's tradeoff narrative explained that Leidos's sample problem approach implemented "more engineering rigor earlier in the process," and that Leidos's technical approach would result in, among other things, fielding capabilities faster, minimizing costly rework, and providing "greater value" from each dollar spent. AR, Tab 16, Decision Document at 8-9. The Decision Document went on to conclude that Leidos's approach represented an increased "return on investment" that would lessen risk to cost, schedule, and performance, and that this technical advantage amply justified paying a slightly higher price. *Id.* at 8-9.

Preliminarily, we reject the protester's argument that the agency's reference to "return on investment" in this context constituted an unstated evaluation criterion or inappropriate cost analysis. It is clear from context that the Decision Document's use of the term "return on investment" reflected a qualitative assessment of the benefit the agency expected to receive in exchange for selecting a technically superior proposal, not, as the protester suggests, a "return on investment" in the sense of income to be received from an investment.

We also reject the protester's argument that the agency erred when it concluded that Leidos's approach would implement more expert engineering hours earlier in the contract. The record does not support the protester's argument that Leidos's higher expert engineering hours in the early contract years were "illusory." Comments and 2nd Supp. Protest at 3. Specifically, the protester argues that many of those expert engineering hours were proposed for the projects for which the agency's BEQ was zero, which the protester argues suggested the agency had no intention of ordering those projects. *Id.* at 3-10. In response, the agency notes that the BEQs were not intended as maximum ordering quantities or limits, but were intended to provide pre-priced

options to calculate costs of such projects, and that the agency may order projects in those categories. 2nd Supp. COS/MOL at 7. Moreover, as discussed in detail above, the solicitation required offerors to provide a work breakdown across labor categories for all projects to permit the agency to assess an offeror's planned labor distribution. Accordingly, we cannot conclude the agency erred by considering Leidos's labor distribution for all projects in making its selection decision.

Next the protester raises several arguments based on statements made by the contracting officer during the protest, but not reflected in the contemporaneous evaluation record. Specifically, the contracting officer explains that during the evaluation briefing the Decision Document asked several questions concerning the composition of the price difference between BAH and Leidos. COS at 10-11. In those discussions, the evaluators explained that differences in price were "primarily driven by an increase in labor rate" and "it was understood and agreed that the higher labor rates would be likely to result in attracting highly qualified personnel, with the remainder of the difference in TEP [total evaluated price] being explained through the proposed approach utilizing expert engineers earlier and more frequently throughout the problem-solving process." *Id.*

The protester argues that the conclusions described by the agency concerning the higher labor rates were flawed in two respects. First, the protester notes that [DELETED] percent of the difference in price was driven by higher management overhead in Leidos's proposal. Comments and 2nd Supp. Protest at 10-13. Second, the protester contends that the agency performed an *ad hoc* analysis based on a comparison of fully burdened labor rates, and argues that the agency's analysis is inconsistent with prior GAO protest decisions that have concluded that fully burdened labor rates are not a proxy for direct compensation. Comments and First Supp. Protest at 7-12.

The agency responds to the protester's contentions with an explanation that the statements were offered as a description of conversations taking place during the evaluation process and not as freestanding evaluation conclusions. See 2nd Supp. COS/MOL at 4-5. In this connection, the agency notes the contemporaneous evaluation record does not include any discussion of the effects of labor rates on attracting qualified personnel, nor does the Decision Document rely on it to distinguish between the two offerors. AR, Tab 16, Decision Document at 8-9. For example, the Decision Document tradeoff narrative focuses entirely on concrete technical advantages of Leidos's proposal and clearly explains why they merit paying a price premium, without any reference to comparative labor rates. *Id.* Because the evaluation documents and the Decision Document provide a supportable explanation of the agency's contemporaneous selection decision, we conclude that the contracting officer's commentary during the protest proceedings does not provide any basis to sustain the protest.

Relatedly, the protester argues, at best, Leidos only proposed significant additional expert engineers in the early years of the contract. Accordingly, the protester maintains

that the agency also erred when it stated that Leidos utilized more expert engineers “throughout the problem-solving process.” Comments and 2nd Supp. Protest at 10-13. However, again, the language the protester focuses on does not appear in the contemporaneous evaluation, but rather was offered as commentary by the contracting officer during the course of this protest. The agency argues that it did not intend the comment to mean that it believed Leidos had proposed more expert engineering hours in all years of the contract, but instead was referring to the “problem-solving” stage of the design process, which takes place early in the contract. See, e.g., 2nd Supp. COS/MOL at 4-5.

Regardless of the agency’s intended meaning, the Decision Document refers only to Leidos implementing “more engineering rigor earlier in the process”; it makes no mention of expert engineering “throughout” the process. AR, Tab 16, Decision Document at 8. The actual contemporaneous evaluation finding was consistent with Leidos’s proposal, which as we discussed above, included more expert engineering hours in the early years of the contract. Accordingly, we see no basis to sustain the protest because of inartful commentary made by the agency in response to the protest when the contemporaneous evaluation record supports the agency’s conclusions and the agency’s comments are not necessarily inconsistent with the underlying evaluation findings.

Factor Weighting and Lack of Documentation

Finally, the protester argues that the agency’s tradeoff gave overwhelming weight to a single technical sub-factor and ignored management approach and cost contrary to the requirements of the solicitation. Protest at 16-20; Comments and 2nd Supp. Protest at 18-20. In this regard, the protester notes that it was similarly technically rated to the awardee on four of the five technical sub-factors, while the awardee only received a higher rating for the case study technical sub-factor. *Id.* The protester also contends that it was significantly higher rated than the awardee under the management approach factor, and proposed a lower price. *Id.*

In this regard, the IFPP explained that, in selecting the best-suited offeror, technical approach was more important than management approach or cost/price. AR, Tab 7, IFPP at 10. However, the IFPP also noted that management approach and cost/price would “contribute substantially” to the selection decision. *Id.* In this regard, the protester notes the agency’s tradeoff decision did not meaningfully discuss the management approach factor. Accordingly, the protester argues that the agency’s tradeoff decision was inadequately documented and inconsistent with the terms of the solicitation.

As noted above, an agency’s source selection process, including a best-value tradeoff, must be reasonable and consistent with the provisions of the solicitation, as well as applicable statutes and regulations. See, e.g., *Intelligent Waves LLC, supra*. Further, a tradeoff analysis must be properly documented, and an award on the basis of a higher-priced proposal that is not supported by valid justification fails to comply with this

requirement. *Blue Rock Structures, Inc.*, B-293134, Feb. 6, 2004, 2004 CPD ¶ 63 at 6; *Universal Building Maintenance, Inc.*, B-282456, July 15, 1999, 99-2 CPD ¶ 32 at 4.

Here, while the solicitation indicated that management and cost/price would be significant, it also made clear that the technical factor was the most important factor. AR, Tab 7, IFPP at 10. In this regard, the agency concluded that Leidos had a significantly superior technical approach, and the Decision Document clearly explained why the technical advantages of Leidos's proposal were worth paying a price premium. See AR, Tab 16, Decision Document at 8-9.

The protester is correct that the tradeoff narrative did not specifically compare BAH's and Leidos's management approaches. *Id.* However, the Decision Document specifically acknowledged that the protester's management approach "far exceeded the requirements" of the solicitation. AR, Tab 16, Decision Document at 3. Additionally, the rating summary chart in the Decision Document also noted that BAH's management approach was rated "major impact-positive," while Leidos's management approach was rated "no impact." *Id.* at 6. That is to say, the contemporaneous record clearly reflects that the Decision Authority was aware of the protester's management advantage and considered it in reaching the award decision. We see no reason why the agency was required to, in effect, repeat information contained earlier in the same document when explaining why it viewed the advantages of Leidos's proposal under the most important factor as worth paying a price premium. Given the deference owed to agencies when making their selection decisions, on these facts, we see no basis to sustain the protest.

The protest is denied.

Edda Emmanuelli Perez
General Counsel