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Decision

Matter of: Hanford Integrated Infrastructure Services Contractor, LLC

File: B-418411; B-418411.2; B-418411.3

Date: April 22, 2020

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DIGEST

1. Protest that the awardee's proposal failed to comply with a material solicitation requirement and should have been deemed ineligible for award is denied where the awardee's small business subcontracting plan contained a clerical error that was properly corrected in a clarification prior to award, and the agency's evaluation is otherwise reasonable.
2. Where the awardee proposed a small business subcontractor to provide pre-award and post-award small business program support to the agency, protest that the awardee's proposal contains an impaired objectivity organizational conflict of interest is denied where it was reasonable for the agency to conclude that no conflict would result from the award of the contract, and future potential conflicts that may arise under subsequent awards are properly analyzed at the time of those subsequent actions.
3. Protest that the evaluation and source selection decision are flawed and that agency officials usurped the authority of the source selection authority is denied where the record shows that the underlying evaluation was reasonable and consistent with the solicitation.

DECISION

Hanford Integrated Infrastructure Services Contractor, LLC (HIISC), of Broomfield, Colorado, protests the award of a contract to Hanford Mission Integration Solutions, LLC (HMIS),¹ of Richland, Washington, under request for proposals (RFP) No. 89303318REM000007, issued by the Department of Energy (DOE) for infrastructure and site services to support the environmental cleanup mission at DOE's Hanford site in Washington. The protester challenges multiple aspects of the agency's evaluation and selection decision.

We deny the protest.

BACKGROUND

The RFP, issued on September 20, 2018, contemplated the award of a contract including cost-reimbursement, cost-plus-award-fee, and indefinite-delivery, indefinite-quantity (IDIQ) contract line item numbers (CLINs) with a period of performance consisting of a 5-year base period, a 3-year first option period, and a 2-year second option period. AR, Tab A, RFP at B-1 and F-2. The purpose of the contract is to provide DOE and other Hanford site contractors with mission essential infrastructure and site integration services to accomplish the environmental cleanup mission, which includes services such as utilities (electrical, water, and sewer), sanitary waste disposal, roads and grounds, and railroad services. *Id.* at C-1 to C-2. The RFP additionally requires the contractor to provide DOE small business procurement pre-award and post-award support. *Id.* at C-182, C-184.

The RFP included the following technical and management factors, in descending order of importance: technical approach, key personnel and organization, and past performance. RFP at M-7. The agency evaluated proposals under the technical approach, and key personnel and organization factors by identifying strengths, weaknesses, and/or deficiencies, and assigning the following adjectival ratings: outstanding, good, satisfactory, marginal, and unsatisfactory. AR, Tab C, Source Evaluation Board (SEB) Report at 42-43. The agency evaluated proposals under the past performance factor by considering recency, relevance, and favorability, and assigning the following ratings: substantial confidence, high level confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence (neutral). *Id.* at 43-44. The RFP stated that award would be made to the responsible offeror whose proposal was determined to be the best value to the government where the greater concern was to obtain a superior technical and management proposal, rather than make an award at the lowest evaluated price. RFP at M-8.

¹ HMIS is a joint venture comprised of Leidos Integrated Technology, Inc., Centerra Group, LLC, and Parsons Government Services Inc. (Parsons). Agency Report (AR), Tab G, HMIS Offer and Other Documents at 1 (Cover Letter).

The agency received three proposals in response to the RFP. AR, Tab C, SEB Report at 18. Under the technical approach factor, the SEB identified three strengths in the HIISC proposal. *Id.* at 73-74. The SEB also identified one significant strength, six strengths, and three weaknesses in the HMIS proposal. *Id.* at 75-80. Under the key personnel and organization factor, the SEB identified two strengths and one weakness in the HIISC proposal. *Id.* at 94-101. For this factor, the SEB also identified two significant strengths, one strength, and one weakness in the HMIS proposal. *Id.* at 103-111. The agency’s overall final evaluation results were as follows:

	HIISC	HMIS
Technical Approach	Good	Outstanding
Key Personnel and Organization	Satisfactory	Good
Past Performance	Satisfactory Confidence	Satisfactory Confidence
Total Proposed Contract Value	\$4.862 billion	\$4.720 billion
Total Evaluated Cost	\$4.819 billion	\$4.849 billion

Id. at 20.

On September 18, 2019, the source selection authority (SSA) concluded that the proposal from HMIS provided the best value to the government. Specifically, the SSA found that HMIS offered a superior proposal with significant discriminators under the evaluation factors for technical approach, and key personnel and organization, worth the minimal price premium. AR, Tab D, Source Selection Decision at 34. On December 5, the agency issued the award to HMIS. On January 8, 2020, HIISC received a debriefing. These protests followed.

DISCUSSION

The protester contends that the HMIS proposal failed to comply with material terms of the RFP and the agency should have concluded the proposal was ineligible for award, but instead the agency engaged in unequal discussions with only HMIS and improperly allowed it to revise its proposal. HIISC further argues that the agency failed to properly assess an unmitigable organizational conflict of interest (OCI) in the HMIS proposal. The protester also challenges certain other aspects of the agency’s evaluation and best-value tradeoff decision. As discussed below, we find no basis to sustain the protest.²

² HIISC’s initial and supplemental protests challenged virtually every aspect of the agency’s evaluation. HIISC subsequently withdrew several arguments. See Comments at 6-8. While our decision here does not specifically discuss each and every remaining argument and/or variations of the arguments, we have considered all of the protester’s assertions and find no basis to sustain the protest.

Subcontracted Work and Small Business Utilization

The protester challenges aspects of the evaluation of the HMIS proposal under the technical approach factor, the gist of which is that HMIS should have been found to be ineligible for award and HIISC has been treated unfairly and unequally. See Comments at 2-3, 8-29. The protester argues that HMIS's proposal failed to comply with the subcontracting requirements of the RFP, and therefore should have been assigned a deficiency or weakness, because its small business subcontracting plan was found to be unacceptable by the agency. Supp. Protest at 14-15; 2nd Supp. Protest at 3-9. The protester further argues that the agency engaged in unfair and unequal discussions with only HMIS regarding its small business subcontracting plan and improperly allowed HMIS to revise its proposal to comply with the RFP. Supp. Protest at 7-9; 2nd Supp. Protest at 11-16.

As relevant to these allegations, the RFP included clause H.53, Subcontracted Work, which requires in pertinent part, as follows: "The Contractor shall subcontract. . . at least 40 percent of the Total Contract Value. . . . At least 50 percent of the Total Subcontracted Work shall be performed by small businesses."³ RFP clause H.53 at H-66. Stated differently, the contractor is required to subcontract a minimum of 20 percent of the total contract value to small businesses.⁴

The RFP required that offerors submit a small business subcontracting plan in the proposal volume with the offer and other documents. The RFP stated as follows:

A completed and acceptable Small Business Subcontracting Plan is required to be submitted in accordance with the Section I clause entitled, [Federal Acquisition Regulation (FAR)] 52.219-9 Small Business Subcontracting Plan Alternate II, and proposal instructions herein. The Subcontracting Plan is not a requirement for evaluation in source selection, but rather, a requirement for award to a large business and it will be incorporated into the resultant contract as Section J Attachment entitled, Small Business Subcontracting Plan.

Id. at clause L-9(k) at L-11.

³ The RFP established the following small business goals, which represent a percentage of the total subcontracted work: 50 percent to small businesses; 3 percent to veteran-owned small businesses, service-disabled veteran-owned small businesses, and Historically Underutilized Business Zone (HUBZone) small businesses; and 5 percent to small disadvantaged businesses and women-owned small businesses. RFP at L-12.

⁴ Fifty percent of forty percent is twenty percent.

The RFP also required that offerors provide information about their commitment to small business utilization in the technical and management proposal volume, under the technical approach factor, as follows:

- (1) The Offeror shall describe its approach to meet the requirement to subcontract at least 50 percent of the Total Subcontracted Work to small businesses, including subcontracting of meaningful work scope (as defined in Section H clause entitled, *Subcontracted Work*).^[5]
- (2) Exclusive of the requirements of [performance work statement (PWS)] Section C entitled, *DOE Small Business Procurement Pre-Award Support*, the Offeror shall also describe its approach to supporting the development of small business through outreach, participation in the Mentor Protégé Program, counseling, and market research.

RFP at L-15. The RFP stated that DOE would evaluate each offeror's "approach to meet the requirement to subcontract at least 50 percent of the Total Subcontracted Work to small businesses, including subcontracting of meaningful work scope." *Id.* at M-3. In addition, the RFP stated that exclusive of the PWS requirements related to DOE small business procurement pre-award support, the agency would evaluate each offeror's "approach to supporting the development of small business through outreach, participation in the Mentor Protégé Program, counseling, and market research." *Id.*

HMIS submitted a small business subcontracting plan in the volume with its offer and other documents. In its small business subcontracting plan, in a figure titled "Goals Expressed as Percentage of Total Planned Subcontracting and Total Dollars Subcontracted," HMIS proposed the total dollars to be subcontracted as \$746,316,632. AR, Tab G, HMIS Offer and Other Documents, Small Business Subcontracting Plan at 3. Of the \$746,316,632 to be subcontracted, the proposal stated that 45 percent of that amount would be subcontracted to large businesses and 55 percent subcontracted to small businesses (with 5 percent to veteran-owned small businesses, 4 percent to service-disabled veteran-owned small businesses, 4 percent to HUBZone small businesses, and 8 percent to small disadvantaged businesses and women-owned small businesses). *Id.*

HMIS also provided information regarding small business utilization in its technical and management proposal. In this volume, HMIS proposed to exceed the goals established by the RFP for small business subcontracting. AR, Tab G, HMIS Technical and Management Proposal, at 1-94. Specifically, HMIS proposed to subcontract 55 percent

⁵ The RFP defined meaningful work as "work that is important to the performance of the technical approach defined by the prime contractor. It is characterized by strong technical content (e.g., discrete and distinct technical or programmatic scopes of work) and contributes to the successful achievement of DOE's goals. It should have a performance-based outcome that directly contributes to the overall contract outcome(s) and can include staff augmentation services." RFP at H-66.

of the subcontracted work to small businesses, with 5 percent to veteran-owned small businesses, 4 percent to service-disabled veteran-owned small businesses, 4 percent to HUBZone small businesses, and 8 percent to small disadvantaged businesses and women-owned small businesses. *Id.* at 1-95. In addition, HMIS set forth its approach to utilizing small businesses for meaningful, professional work on the contract. *Id.* at 1-94 to 1-100.

HMIS's small business subcontracting plan was found by the agency to be unacceptable as follows:

[T]he Offeror proposes to subcontract a total of only 22 percent (\$746,316,632.60) of the Total Contract Value. This 22 percent is lower than the 40 percent required by RFP Section H.53, Subcontracted Work. Based on the proposed Total Contract Value (exclusive of IDIQ CLINs), the Offeror should have proposed a minimum of \$1,356,939,332 in order to meet the 40 percent requirement. . . . Of the 22 percent, the Offeror proposes to subcontract 55 percent to small-business concerns, which exceeds the requirement in RFP Section L.11 (k)(3) of 50 percent total subcontracted work. . . . HMIS proposes 55 percent (\$205,237,073) to be subcontracted with small businesses and the following percentages by socioeconomic category: service-disabled veteran-owned small business – 4 percent; HUBZone small business – 4 percent; small disadvantaged business – 8 percent; and women-owned small business – 8 percent. . . . [B]ecause the total percent proposed to be subcontracted falls short of the RFP Section H.53, *Subcontracted Work* clause, the values would be increased to meet minimum goals were the 40 percent subcontract requirement met. In the event that HMIS is the apparent awardee, the subcontracting goals must be adjusted to meet the minimum required subcontracting and small-business goals, as outlined in the RFP.[⁶]

AR, Tab C, SEB Report at 56.

On September 16, 2019, the agency sent a letter to HMIS and stated: "Regarding your Small Business Subcontracting Plan, please confirm that HMIS intends to subcontract 40% of the Total Estimated Cost. . . in accordance with clause H.53, Subcontracted Work" by "revis[ing] your plan to illustrate the H.53 goal." AR, Tab E.2, Communications with HMIS, at 12. The letter advised HMIS that it was sent "to clarify an issue as a matter of responsibility in the proposed HMIS Small Business Subcontracting Plan," and that "revisions to your proposal beyond the Small Business Subcontracting Plan are not desired and will not be accepted." *Id.*

⁶ HIISC's small business subcontracting plan was also found to be unacceptable as the result of incorrect calculations of the small business subcategory goals, and the agency similarly stated that "[i]n the event that HIISC is the apparent awardee, the subcontracting goals must be adjusted to meet the minimum required small-business goals, as outlined in the RFP." AR, Tab C, SEB Report at 56.

On September 17, HMIS confirmed its commitment to subcontract 40 percent of the total contract value and advised that there were clerical errors in the small business subcontracting plan submitted with its proposal. AR, Tab E.2, Communications with HMIS, at 13. HMIS explained that it had used the total dollar value to be subcontracted to small businesses, rather than the total dollar value to be subcontracted to all businesses, to compute the 55 percent it intended to subcontract to small business, and corrected these sums in its revised plan. *Id.* HMIS stated that it “has taken no exception to the RFP requirements, including Clause H.53. Further, HMIS intends to subcontract 55% of the total subcontracted dollars to small businesses, as stated in Volume II Factor 1, Section 5.0 of our proposal titled ‘Commitment to Small Business Utilization.’” *Id.*; see also *id.* at 20 (providing HMIS’s revised small business subcontracting plan and proposing to subcontract a total of \$1,356,939,331.82 to all businesses, which is 40 percent of the total contract value).

The FAR requirement for an acceptable small and small disadvantaged business subcontracting plan is applicable to the “apparently successful offeror,” and on that basis, we have explained that exchanges regarding the acceptability of a required small business subcontracting plan—even the submission of a revised plan—relate to an offeror’s responsibility and therefore are not discussions. See FAR 19.702(a); *Central Texas College*, B-309947, Oct. 12, 2007, 2007 CPD ¶ 187 at 4 n.1. In addition, the FAR permits an agency to engage in limited exchanges with offerors to resolve minor or clerical errors, and requesting clarification from one offeror does not trigger a requirement that the agency seek clarification from other offerors. FAR 15.306(a); *New Directions Techs., Inc.*, B-412703.2, B-412703.3, Aug. 18, 2016, 2016 CPD ¶ 241 at 7.

Here, the record shows that the agency evaluated small business contracting plans as a matter of responsibility. As noted, the RFP stated that the small business subcontracting plan was not a requirement for evaluation in source selection, but rather, a requirement for award to a large business. RFP at L-11. Separately, the RFP required that the agency evaluate an offeror’s commitment to small business utilization under the technical approach factor. Specifically, the RFP stated the agency would evaluate the proposed approach to meet the requirement to subcontract a minimum of 50 percent of the total subcontracted work, including meaningful work, to small businesses, and to supporting small business development through outreach, mentor-protégé relationships, counseling, and market research. *Id.* at M-3.

Further, the record shows that the unacceptability of the HMIS small business subcontracting plan was due to a mistake or clerical error in the sum used for the total dollars to be subcontracted. In response to the agency’s clarification letter, HMIS stated that it “used the wrong value for the total dollars to be subcontracted,” and “used the total amount of dollars to be subcontracted to small businesses (55% of 40% of [total contract value]) instead of the total amount to be subcontracted to all businesses (40% of [total contract value]).” AR, Tab E.2, Communications with HMIS at 13. Consistent with this statement, HMIS included the identical sum for subcontracting to all businesses set forth in its proposal as the sum to be subcontracted to small businesses

in its revised small business subcontracting plan. *Compare* AR, Tab G, HMIS Offer and Other Documents, Small Business Subcontracting Plan, at 3 (proposing to subcontract \$746,316,632 to all businesses) *with* AR, Tab E.2, Communications with HMIS at 20 (HMIS's revised small business subcontracting plan, proposing to subcontract \$746,316,632 to small businesses). HMIS did not change its total price, the total percentage to be subcontracted to all businesses, or the total percentage to be subcontracted to small businesses.

To the extent that the protester has premised other challenges to the agency's evaluation of HMIS's technical approach on its conclusion that the HMIS proposal failed to comply with the RFP's subcontracting requirements and was ineligible for award, we find that these arguments lack merit. For example, HIISC argues that HMIS should have received a weakness or deficiency under the technical approach factor for failing to subcontract 40 percent of the contract value. Supp. Protest at 14-15. Here, the RFP stated: "Exceptions or deviations by the Offeror to the terms and conditions stated in the solicitation for the resulting contract shall make the offer unacceptable for award without discussions." RFP at clause L.9(g)(2) at L-11. However, HMIS took no exception to the RFP. AR, Tab G, HMIS Offer and Other Documents at 42 ("[HMIS] takes no exceptions nor requests any deviations."). Rather, as discussed, the agency's initial conclusion that HMIS's small business subcontracting plan was unacceptable because it proposed to subcontract only 22 percent of the work was the result of a clerical error, and HMIS confirmed that it intended to subcontract 40 percent of the contract work as required by the RFP when the agency requested clarification. On this basis, we find that the agency reasonably evaluated the HMIS proposal and did not engage in unequal discussions. This aspect of HIISC's protest is denied.

Organizational Conflict of Interest

Next, the protester argues that the HMIS proposal contains an unmitigable impaired objectivity OCI that the agency failed to reasonably evaluate. See Protest at 80-83. HIISC argues that HMIS's proposed subcontractor, North Wind Solutions, a small business with contracts at Hanford and other DOE sites, is proposed to perform work related to small business program support, and will be in a position to make recommendations and/or draft solicitations to benefit itself or its parent and affiliates. HIISC also argues that North Wind will be able to gain access to useful nonpublic information of its competitors. Supp. Protest at 47-53. The protester alleges that "North Wind's competing interests as a DOE contractor performing small business set aside work for DOE at Hanford undermines North Wind's ability to render impartial advice to the Government regarding DOE's small business contracting pre and post award activities."⁷ Comments at 39.

⁷ The protester withdrew its initial allegation that DOE failed to consider a potential OCI related to North Wind's performance of a contract at the Hanford site for DOE's Office of River Protection. HIISC however, "continues to protest that DOE did not consider other, [unmitigable OCIs] of North Wind/HMIS." Comments at 7.

The agency argues that it reasonably performed an OCI analysis, recognized areas where an OCI would occur under the PWS, and identified these areas in the RFP. The agency argues that an OCI is not created by North Wind's proposed performance of PWS elements related to DOE small business procurement pre-award and post-award support. Contracting Officer's Statement of Fact and Memorandum of Law (COS/MOL) at 136-146. The agency also argues that the protester's speculation about future OCIs are matters of contract administration that GAO does not review. *Id.*

An impaired objectivity OCI arises where a firm's ability to render impartial advice to the government would be undermined by the firm's competing interests. FAR 9.505-3; *Council for Logistics Research, Inc.*, B-410089.2, B-410089.3, Feb. 9, 2015, 2015 CPD ¶ 76 at 9. The concern in such impaired objectivity situations is that a firm's ability to render impartial advice to the government will be undermined by its relationship to the product or service being evaluated. *Diversified Collection Servs., Inc.*, B-406958.3, B-406958.4, Jan. 8, 2013, 2013 CPD ¶ 23 at 5.

Contracting officers are required to identify and evaluate potential OCIs as early in the acquisition process as possible, and avoid, neutralize, or mitigate significant potential conflicts of interest before contract award. FAR 9.504(a), 9.505. However, our Office has expressly concluded that OCIs that may arise under subsequent awards are properly analyzed at the time of those subsequent actions. *Nuclear Production Partners LLC; Integrated Nuclear Prod. Solutions, LLC*, B-407948 *et al.*, Apr. 29, 2013, 2013 CPD ¶ 112 at 21.

Here, the record shows that prior to issuing the RFP, the agency performed an OCI analysis that assessed conflicts that would be created by a company and/or its parent and affiliates concurrently performing other Hanford site contracts and certain portions of the PWS. AR, Tab C, SEB Report at 21-22. As a result, the RFP included clause H.78, Organizational Conflict of Interest Between Hanford Site Contracts, which identified five Hanford site contracts and precluded any contractor, including any member of a contractor team arrangement or its subcontractors, from concurrently performing those contracts and certain sections of the PWS. RFP at H-90. The solicitation did not identify any PWS sections relating to DOE small business procurement pre-award and post-award support as work scope that would create an impaired objectivity OCI with any of the five identified Hanford site contracts. *Id.*

As required by the RFP, the HMIS proposal included OCI disclosures from all members of the contractor team, in which neither HMIS nor North Wind identified any OCIs. AR, Tab G, HMIS Offer and Other Documents at 156-157 (HMIS OCI Disclosure), 171-172 (North Wind OCI Disclosure). In response to the protest allegations, the contracting officer compared the work scope identified in the RFP as creating OCIs with areas of the PWS that HMIS proposed to be performed by North Wind, and confirmed that the work scope areas did not overlap. First Decl. of Contracting Officer at 2. Although North Wind is proposed to perform DOE small business procurement pre-award and post-award support, the contracting officer concluded that an OCI did not exist in the HMIS proposal. *Id.* at 2-3.

We agree with the agency that it is not possible to determine in advance whether any future DOE pre-award or post-award small business procurement activity will present a potential OCI. The PWS requirements for DOE small business procurement pre-award support state that the contractor shall identify meaningful work in the PWS for award to small businesses as DOE prime contracts during the first year of contract performance, unless otherwise directed by DOE. RFP at C-182. For DOE small business procurement post-award support, the PWS requires that the contractor “provide contract administration support to DOE for the awarded small business DOE prime contracts” in the second year of contract performance, unless otherwise directed by DOE. *Id.* at C-184. Since it is unknown what work scope will be selected for small business competition, much less which contractors may compete and win awards, it would be premature to conclude that North Wind’s performance of this work scope creates an OCI. See *MAR, a Div. of Oasis Sys., LLC*, B-414810.5, July 26, 2018, 2018 CPD ¶ 266 at 5-6 (finding that to the extent future task orders might present a possible OCI, the agency will evaluate the question at the time the task orders are issued). Thus, we deny this aspect of HIISC’s protest.

Other Challenges to the Evaluation and Best-Value Tradeoff Decision

The protester also challenges other aspects of the evaluation and resulting best-value tradeoff decision, which we will address as follows: (1) the agency either failed to evaluate proposals in accordance with the RFP or failed to adequately document its evaluation; (2) the agency disparately evaluated offers under the technical approach factor; (3) the HMIS proposal failed to comply with the RFP’s acceptance period and should have been rejected; and (4) the timeline of procurement activities preceding award to HMIS demonstrates that agency officials usurped the authority of the SSA. As discussed below, we find none of these protest allegations have merit.

Adequacy of the Evaluation and Documentation

The protester argues that the agency’s evaluation departed from the RFP criteria because the agency either failed to evaluate or failed to document its evaluation of the PWS elements the RFP required offerors to address under the technical approach factor. Supp. Protest at 11-12; 2nd Supp. Protest at 28-29; see *also* Comments at 46-50. The protester further argues that the agency failed to reasonably consider the strengths and weaknesses identified in HMIS’s proposal under the technical approach factor, and treated offerors disparately by assigning a lower rating of good to HIISC’s proposal despite identifying no weaknesses in its technical approach. 2nd Supp. Protest at 21-26.

The RFP required that offerors provide five types of information under the technical approach factor, one of which was a detailed technical approach to perform 11

specifically identified PWS elements.⁸ RFP at L-14 to L-15. To that end, the RFP’s evaluation criteria stated, in pertinent part: “DOE will evaluate the completeness, feasibility, and effectiveness of the Offeror’s technical approach for the specified PWS elements.” *Id.* at M-2. In its evaluation, the SEB reviewed proposals, identified strengths and weaknesses, and documented them in its report. As relevant here, the SEB stated as follows: “The SEB evaluated the completeness, feasibility and effectiveness of each Offeror’s technical approach for the PWS elements specified. . . . Unless specifically discussed as either a Strength or Weakness below, other aspects of the Offeror’s proposal under [the technical approach factor] were deemed to be neither Strengths nor Weaknesses.” AR, Tab C, SEB Report at 72-73. As noted, the SEB identified three strengths in the HIISC technical approach, and assigned a rating of good; the SEB identified one significant strength, six strengths, and three weaknesses in the HMIS technical approach, and assigned a rating of outstanding.⁹ *Id.* at 73-81.

Agencies are required to evaluate proposals based solely on the factors identified in the solicitation, and must adequately document the bases for their evaluation conclusions. *Intercon Assocs., Inc.*, B-298282, B-298282.2, Aug. 10, 2006, 2006 CPD ¶ 121 at 5. An agency’s evaluation of proposals and source selection decision should be documented in sufficient detail to allow for the review of the merits of a protest. *Clark/Foulger-Pratt JV*, B-406627, B-406627.2, July 23, 2012, 2012 CPD ¶ 213 at 10. An agency that fails to adequately document its evaluation of proposals or source selection decision bears the risk that its determinations will be considered unsupported, and absent such support, our Office may be unable to determine whether the agency had a reasonable basis for its determinations. *Id.*; *Sterling Med. Corp.*, B-412407, B-412407.2, Feb. 3, 2016, 2016 CPD ¶ 73 at 7. However, an agency is not required to document all “determinations of adequacy” or explain why a proposal did not receive a strength, weakness, or deficiency for a particular item. *Enterprise Servs., LLC et al.*, B-415368.2 *et al.*, Jan. 4, 2018, 2018 CPD ¶ 44 at 8.

⁸ The 11 PWS elements offerors were required to specifically address are as follows: C.4.1.1.4, Electrical Planning; C.4.1.2.2, Water System Planning; C.4.1.3.2, Sewer System Planning; C.4.4.1, Fire and Emergency Response Services; C.4.6.1.1, Strategic Planning, Governance, Enterprise Architecture, and Program Management; C.4.6.3.5, Industrial Control Systems/Supervisory Control and Data Acquisition; C.4.8.2, Conduct of Maintenance; C.4.12.1, Engineering; C.4.12.6.1, Program Management and Integration; C.4.12.6.7, Project Management; and C.4.12.7, Hanford Portfolio Analysis, Project Support and Independent Assessment. RFP at L-14 to L-15.

⁹ As defined, a rating of outstanding would be assigned to a proposal that exhibited “very limited risk, significant strengths and/or strengths, and no significant weaknesses and/or few if any weaknesses.” AR, Tab C, SEB Report at 42. A rating of good would be assigned to a proposal that exhibited “limited risk, significant strengths and/or strengths, and few, if any significant weaknesses and/or weaknesses.” *Id.*

Here, we find that the evaluation was adequately documented. The protester argues: “One would expect some description of each offeror’s approach to the 11 different PWS elements, along with DOE’s determinations with respect to ‘completeness, feasibility, and effectiveness’ for each of those 11 PWS elements in the record.” 2nd. Supp. Protest at 28. However, nothing in the RFP mandated that the agency document its evaluation in the specific manner the protester contemplates. The evaluation of offerors’ technical approaches included multiple elements. For example, the evaluation under the technical approach factor considered not only the approach to performing the 11 specified PWS elements but also the “Offeror’s technical understanding of the full PWS for the PWS elements not specified.” RFP at M-2. The final technical evaluation shows that the agency identified specific aspects of each offeror’s technical approach that presented either strengths or weaknesses, consistent with the evaluation criteria.

Based on our review, the record shows that the evaluators considered the overall completeness, feasibility, and effectiveness of the offerors’ technical approaches as they related to the 11 PWS elements, notwithstanding that the SEB did not document its evaluation conclusions specific to each of the 11 PWS elements.¹⁰ AR, Tab C, SEB Report at 73-80. Instead, the agency identified strengths and weaknesses related to the technical approaches with respect to specific PWS elements; indeed, in its evaluation of the HMIS proposal, the agency identified both strengths and weaknesses related to each of the following two PWS elements: C.4.6.1.1, Strategic Planning, Governance, Enterprise Architecture, and Program Management, and C.4.8.2, Conduct of Maintenance. *Id.* at 80. Additionally, the SEB explicitly stated that any aspect of an offeror’s technical approach not discussed was found to constitute neither a strength nor a weakness, and explained the rationale for the ratings assigned. *Id.* at 73-75, 80-81.

When assigning the overall ratings, the SEB looked at the entirety of the proposed technical approaches. The SEB concluded that the HMIS proposal merited an outstanding rating because the significant strength and strengths, when considered against the weaknesses, were “offsetting and demonstrate an outstanding ability to meet the contract performance requirements with very limited risk” due to the comprehensive understanding of the unique leadership functions necessary to execute the PWS requirements. *Id.* at 81. Thus, we find the evaluation record to be adequately documented because it provides us with a basis to understand the agency’s conclusions. While HIISC may disagree with the ratings and the conclusions, such

¹⁰ We recognize that under the key personnel and organization factor, the SEB documented its evaluation conclusions for each proposed key person, the oral presentation, and the proposed organization, including the SEB’s conclusions that these aspects of the proposal constituted neither a strength nor a weakness in the proposal. However, we do not find that the agency’s documentation of its conclusions in this manner under the key personnel and organization factor otherwise makes inadequate the manner in which the SEB documented its conclusions under the technical approach factor. As even the protester acknowledges, the PWS includes approximately 250 elements that the contractor will be required to perform. 2nd Supp. Protest at 21.

disagreement does not demonstrate that the evaluation conclusions are lacking in detail. Accordingly, we deny this protest allegation.

Disparate Treatment

HIISC also argues that DOE identified multiple strengths for HMIS's technical approach in several PWS elements while failing to identify similar strengths in the HIISC proposal for substantially similar aspects of the proposals. Supp. Protest at 15-16; 2nd Supp. Protest at 20-21. Specifically, the protester alleges that HMIS received strengths for "[DELETED]." Supp. Protest at 15. HIISC also argues that "HIISC proposed to [DELETED] in the same way that HMIS did. . . [but] DOE did not assign a strength to HIISC for this." 2nd Supp. Protest at 20. The agency argues that it did not evaluate offerors unequally, and there are fundamental differences in the proposals that account for different evaluation results. COS/MOL at 37-38, 41-43.

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. *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. Here, HIISC has not made the requisite showing that the agency treated the two proposals unequally. See *Alphaport, Inc.*, B-414086, B-414086.2, Feb. 10, 2017, 2017 CPD ¶ 69 at 7.

The record shows that contrary to the protester's allegation, the agency did not identify multiple strengths in the HMIS proposal for each of the alleged PWS elements [DELETED]. Rather, the agency identified an aspect of the HMIS proposal--the proposed use of [DELETED]--that implicated each of these elements of the PWS, and assigned one strength related to HMIS's technical approach as follows:

The Offeror proposes to expand the use of [DELETED] (Volume II, pp. 1-12) beyond the intent of the contract deliverable for the System Health and Status Reports as required in PWS Section C.4.12.1 - Engineering. This is a novel approach that would [DELETED] within PWS Sections C.4.1.1.4 - Electrical Planning, C.4.1.2.2 - Water System Planning, and C.4.1.3.2 - Sewer System Planning scopes of work [DELETED]. The SEB evaluated and determined that this is an effective approach that would help DOE, the Offeror and [other Hanford contractors] increase effectiveness by allowing better-informed decisions [DELETED] that support the Site cleanup mission. Utilizing this approach, the Offeror would be better able to understand [DELETED]. In addition, the Offeror's approach integrates [DELETED]. This would provide an effective, comprehensive approach that would [DELETED] that does not exist today. The Offeror's approach is complete, feasible and effective, and increases the probability of successful contract performance.

AR, Tab C, SEB Report at 76; see also Tab G, HMIS Technical and Management Proposal at 1-12 to 1-13 (proposing [DELETED]).

In this regard, the engineering work scope of the PWS requires as follows: “Quarterly [system health reports] shall be developed to status and trend the operability, reliability and material condition of the critical infrastructure.” RFP at C-153 (PWS Section C.4.12.1, Engineering). As cited by the protester, the section of the HIISC proposal responding to the engineering requirements states, in pertinent part: “[W]e develop Quarterly System Health Reports that assess and trend system operability and reliability performance for critical infrastructure.” AR, Tab H, HIISC Proposal, Technical and Management Proposal, at 53; see also *id.* at 71 (stating that system health reports are used in its project management process to identify deficiencies and potential projects). While this shows that HIISC proposed to comply with the PWS requirements, HIISC has not cited to where in its proposal it proposed to [DELETED]. Based on our review, the protester has not demonstrated that the differences in the evaluation in this regard did not stem from differences between the offerors’ proposals. Thus, we deny this aspect of the protest.

Expiration of Subcontractor’s Cost Proposal

The protester additionally argues that the HMIS proposal failed to comply with the RFP and was ineligible for award. Specifically, the protester argues that HMIS included a cost proposal for its proposed subcontractor North Wind that failed to comply with the RFP’s period of acceptance and was expired at the time of award. As a result, the protester argues that the HMIS proposal should have been found ineligible for award. Supp. Protest at 62-64; 2nd Supp. Protest at 9-11, 27.

Here, the RFP required that offers remain valid for 365 calendar days after the required due date for proposals, which was November 19, 2018. RFP clause L.7 at L-2. The HMIS proposal complied with this requirement.¹¹ AR, Tab G, HMIS Offer and Other Documents at 7 (HMIS SF-33 Form); see also HMIS Cover Letter at 1 (“The proposal, in its aggregate form, is valid for 365 calendar days after the required submittal date of November 19, 2018 unless withdrawn or extended in writing.”). The agency subsequently issued RFP amendment 0003, which required that the “Offeror’s proposal shall be valid for 395 calendar days after the required due date for proposals.” AR, Tab E.5, HMIS SF33 and Related Communication at 5. HMIS agreed to extend the period of acceptance of its offer to 395 days. *Id.* at 4-6.

On this record, we find the HMIS offer had not expired prior to award. Our Office has concluded that the expiration of a subcontractor’s cost proposal does not by itself invalidate the prime contractor’s proposal. *Sigma Space Corp.--Recon.*, B-410062.4, Mar. 9, 2015, 2015 CPD ¶ 104 at 4. As a general matter, it is not improper for an

¹¹ North Wind submitted a cost proposal to the agency as HMIS’s proposed critical subcontractor. AR, Tab G.2, North Wind Proposal at 3. The North Wind proposal stated: “Our cost proposal is valid for a period of 365 days from 10/31/18.” *Id.* at 1.

agency to accept an expired offer without reopening negotiations where acceptance is not prejudicial to the competitive system. *Scot, Inc.*, B-295569, B-295569.2, Mar. 10, 2005, 2005 CPD ¶ 66 at 9. Even where the acceptance period has expired on all offers, an agency may allow the successful offeror to waive the expiration of its proposal acceptance period without reopening negotiations and make award on the basis of the offer as submitted. *Id.*

HMIS offered the required acceptance period, and extended its offer for the additional period required by RFP amendment 0003. We have no basis to conclude that the agency should have rejected the HMIS proposal, or otherwise concluded that the expiration of the North Wind proposal invalidated the entire HMIS proposal to otherwise render it ineligible for award. Accordingly, this protest allegation is denied.

Usurping the Authority of the SSA

The protester argues that the SEB and contracting officer usurped the authority that was delegated exclusively to the SSA.¹² Supp. Protest at 60-68; 2nd Supp. Protest at 27-32. Much of this allegation is based on arguments addressed in this decision which, as already discussed, we have found lacking in merit. However, HIISC additionally argues that the award to HMIS should not be allowed to stand because the SEB updated its evaluation of HMIS's past performance (as it relates to joint venture member Parsons) after the September 18, 2019 selection decision was issued, and there is no evidence in the record that the SSA considered the SEB's new evaluation prior to award. Supp. Protest at 64-67; 2nd Supp. Protest at 30-32; see *also* Comments at 4-6.

In addition, related to the specific contract for which the SEB considered updated information, the protester argues that the agency failed to meaningfully evaluate "a general trend of serious degrading performance," and that this aspect (among others) of HMIS's past performance evaluation was unreasonable. Supp. Protest at 35, 38-44. The agency argues that, despite the protester's disagreement, its evaluation of HMIS's past performance was reasonable, and the SSA was fully briefed regarding the updated past performance evaluation prior to contract award. COS/MOL at 94-101, 165-167.

¹² One basis for HIISC's argument relates to DOE's release on September 16, 2019, of a congressional notification of pending contract action that identified HMIS as the awardee. See Comments at 9. The protester argues the SSA's authority was usurped because the congressional notification occurred on the same date that the agency entered into "discussions" with HMIS regarding its small business subcontracting plan, and pre-dates HMIS's submission of its revised small business subcontracting plan and the source selection decision. DOE explains that "on September 17, 2019[, t]he notice was rescinded due to a procedural error in its initial release, as it had been released prematurely before all standard pre-contract award reviews had been completed." COS/MOL at 9-10. We find that this error, immediately remedied by the agency the following day, fails to provide any evidence of bad faith or that the SSA did not retain the authority to independently make a source selection decision.

As relevant to these allegations, the RFP stated that the agency would evaluate past performance information for contracts currently being performed and/or completed within the last five years of the solicitation issuance date. RFP at M-4. The RFP further stated that the past performance evaluation would include the following:

DOE will evaluate the Offeror and all members of a teaming arrangement, as defined in FAR 9.601(1), and any critical subcontractors, in accordance with the work each entity is proposed to perform. The recency and relevancy of the information and general trends in contractor performance will be considered in the evaluation. The higher the degree of relevance of the work, the greater the consideration that may be given. Additionally, more recent relevant past performance information may also be given greater consideration.

Id. at M-5. In its past performance evaluation, the agency considered contracts referenced in the proposals as well as contracts identified from other sources not provided by the offeror, and assigned the following relevancy ratings: very relevant, relevant, somewhat relevant, and not relevant. AR, Tab C, SEB Report at 33, 44. Only contracts determined to be at least somewhat relevant were considered in the overall evaluation of an offeror's past performance. *Id.* at 33. In addition, the agency considered a variety of past performance information, such as Contractor Performance Assessment Reporting System (CPARS) reports, actions taken by contractors when challenges and problems were encountered during performance of the referenced contracts, recognized accomplishments on the referenced contracts, and Occupational Safety and Health Administration (OSHA) safety statistics. *Id.* The agency assigned these aspects of contract performance the following favorability ratings: highly favorable, favorable, neither favorable nor unfavorable, unfavorable, and highly unfavorable. *Id.* at 44.

Here, the record shows that in its evaluation of HMIS's past performance, the agency considered the Salt Waste Processing Facility (SWPF) contract performed by HMIS team member Parsons as a prime contractor for DOE's Savannah River Operations Office. Specifically, based on its size, scope, and complexity, the SEB concluded that the SWPF contract was somewhat relevant to the PWS. AR, Tab C, SEB Report at 152-153. The SEB additionally reviewed CPARS reports dating back to 2016 and concluded that Parsons' performance of the contract was unfavorable. *Id.* at 166-167. Overall, the SEB assigned HMIS a past performance rating of satisfactory confidence, based on its combined consideration of eight contracts performed by various team members whose relevance ranged from somewhat relevant to very relevant, and with varying aspects of the past performance ranging from unfavorable to highly favorable. *Id.* at 170-172.

The record further shows that on December 4, several months after the SEB report and selection decision, and one day before the contract was awarded, the SEB prepared an addendum to its report. This addendum documented the SEB's consideration of additional past performance information that became available after its report was

finalized on September 4. Specifically, the SEB reviewed an interim CPARS report regarding the SWPF contract, issued on November 12, and concluded as follows:

The CPARS report included the following ratings: Marginal for Quality, Utilization of Small Business, Regulator Compliance, and Safety, and Unsatisfactory for Schedule, Cost Control, and Management. These ratings represented a decrease from the previous assessment period, and specifically noted late delivery of documents, missed schedule milestones and contract deliverable dates, inability to meet small business goals, and failure to address issues noted in previous CPARS assessments. Though this assessment is not yet final, due to the troubling concerns and ratings it contains, this CPARS is considered by the SEB to be Unfavorable. In consideration of this CPARS alongside the other CPARS information for the previous four periods, the overall CPARS information for the SWPF contract remains Unfavorable, and the HMIS record of past performance, evaluated as a whole, maintains its assigned adjectival rating of Satisfactory Confidence.

AR, Tab C.1, SEB Report Addendum at 1. In response to the protest allegations, the contracting officer declared as follows: “I, as the Contracting Officer, briefed the Source Selection Authority on the issue at the time and he was informed and aware of the additional Past Performance Information contained in the December 4, [2019] Addendum to the Source Evaluation Board Report.” Second Decl. of Contracting Officer at 1.

The evaluation of an offeror’s past performance is within the discretion of the contracting agency, and we will not substitute our judgment for reasonably based past performance ratings. *AAR Integrated Techs.*, B-416859.4, June 11, 2019, 2019 CPD ¶ 214 at 6. Where a solicitation calls for the evaluation of past performance, we will examine the record to ensure that the evaluation was reasonable and consistent with the solicitation’s evaluation criteria and procurement statutes and regulations. *Divakar Techs., Inc.*, B-402026, Dec. 2, 2009, 2009 CPD ¶ 247 at 5. In addition, the assessment of the relative merit of an offeror’s past performance information is generally within the broad discretion of the contracting agency. *Lukos, LLC*, B-416343.2, Aug. 13, 2018, 2018 CPD ¶ 282 at 8. A protester’s disagreement with the agency’s judgment does not establish that an evaluation was unreasonable. *FN Mfg., LLC*, B-402059.4, B-402059.5, Mar. 22, 2010, 2010 CPD ¶ 104 at 7.

On this record, the protester has failed to establish that the evaluation was unreasonable. The protester does not challenge DOE’s conclusion that the SWPF contract was only somewhat relevant to the PWS; rather, the protester argues that the agency should have assigned a rating of highly unfavorable, rather than unfavorable, for Parsons’ SWPF CPARS reports. Supp. Protest at 41. HIISC also argues that the agency’s erroneous rating is exacerbated by its conclusion concerning other aspects of Parsons’ performance, specifically, the assignment of ratings of favorable for Parsons’ consistent successful response to challenges and problems encountered during

performance of the referenced contracts and OSHA safety statistics. *Id.*; see also AR, Tab C, SEB Report at 167-168.

Contrary to the protester's arguments, we find that the agency reasonably considered general trends in contractor performance as required by the RFP, and provided a reasonable basis for the ratings it assigned for Parsons' performance of the SWPF contract and HMIS's overall past performance. The record shows that the agency considered the four previous evaluation periods for Parsons' performance of the SWPF contract, which "reflected ratings ranging from Marginal to Exceptional, with predominantly Very Good ratings." AR, Tab C, SEB Report at 166. However, the SEB assigned a rating of unfavorable for Parsons' past performance because "[a]lthough the Offeror has positive CPARS for the previous three (3) performance periods, the SEB determined the negative CPARS information for the most recent performance period, including completing only 47 percent of planned activities on schedule, missed milestone dates, and cost overruns on a current and ongoing DOE contract, are attributes that increase the risk of unsuccessful performance." *Id.* at 167. This conclusion provides clear evidence that the agency recognized there was a negative trend in Parsons' SWPF contract performance, consistent with the RFP evaluation criteria.

In addition, we find no basis to conclude, despite the protester's disagreement, that the agency should have assigned a lower rating of highly unfavorable related to Parsons' CPARS reports on the SWPF contract. As required by the RFP evaluation criteria, the performance occurred within five years of the solicitation issuance date, and as noted by the SEB included "predominantly Very Good ratings." *Id.* at 166. We further find that the interim CPARS report considered by the SEB after its initial report is evidence that the SEB continued to evaluate the general trends in contractor performance. Indeed, the SEB explicitly recognized that the "ratings represented a decrease from the previous assessment period" and that the CPARS information for the SWPF contract were generally unfavorable. After considering these issues, the SEB reasonably decided to retain an overall past performance rating of satisfactory confidence for HMIS. See AR, Tab C.1, SEB Report Addendum at 1. As noted, the RFP stated that greater consideration would be given both to more relevant and more recent past performance. While the interim CPARS report was the most recent past performance information available, the SWPF contract was deemed to be only somewhat relevant to the PWS. Thus, we take no issue with the SEB's conclusion that no change in any of the ratings assigned in the evaluation of HMIS's past performance was warranted due to the interim CPARS report on the SWPF contract.

Finally, we note that the protester has provided no basis for our Office to reject the contracting officer's representation that the SSA was briefed regarding the SEB's updated past performance evaluation. Government officials are presumed to act in good faith, and we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. *Career Innovations, LLC*, B-404377.4, May 24, 2011, 2011 CPD ¶ 111 at 7-8. Accordingly there is nothing in the record evidencing that the SEB usurped the SSA's responsibility to make a best-value tradeoff decision. The

protester has not identified any procurement law or regulation that requires the SSA to issue an addendum to the selection decision, or issue a completely new decision in a circumstance such as this.

The protest is denied.

Thomas H. Armstrong
General Counsel