



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

Comptroller General
of the United States

Decision

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Matter of: NOVA Dine, LLC

File: B-420454; B-420454.2

Date: April 15, 2022

Thomas Mason, Esq., Francis E. Purcell, Jr., Esq., Joseph Berger, Esq., and Mona Adabi, Esq., Thompson Hine LLP, for the protester.

Cherie J. Owen, Esq., William O'Reilly, Esq., and Issac D. Schabes, Esq., Crowell & Moring LLP; Daniel J. Strouse, Esq., Cordatis LLP; and Matthew Schoonover, Esq., Schoonover & Moriarty LLC, for Competitive Range Solutions, LLC, the intervenor.

Colleen A. Eagan, Esq., and Vera A. Strelbel, Esq., Defense Information Systems Agency, for the agency.

Alexander O. Levine, Esq., and Kenneth E. Patton, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest alleging that agency engaged in misleading discussions that led the protester to increase its proposed direct labor rates is denied where the agency accurately identified its concerns and where the protester made its own independent business judgment to raise rates rather than justify its proposed rates.
 2. Protest challenging agency's assessment of the relevancy of awardee's past performance is denied where the agency's evaluation was reasonable and where the protester has not demonstrated that any errors caused it competitive prejudice.
 3. Protest challenging agency's technical evaluation is denied where the agency's evaluation was reasonable and consistent with the solicitation evaluation criteria, and where the agency's different evaluation judgments were reasonably explained by differences in the offerors' proposals.
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DECISION

NOVA Dine, LLC, a small business located in Scottsdale, Arizona, protests the award of a contract to Competitive Range Solutions, LLC (CRS), a small business located in Chicago, Illinois, under request for proposals (RFP) No. HC-1028-20-R-0060, issued by the Department of Defense, Defense Information Systems Agency (DISA), for the Technologies Refreshment and Implementation-Global Solution Management (TRI-

GSM) program. The protester argues that the agency conducted an unreasonable and unequal technical evaluation, engaged in misleading discussions on cost, improperly evaluated past performance, and made a flawed source selection determination.

We deny the protest.

BACKGROUND

On September 14, 2020, the agency issued the solicitation seeking proposals for a single-award, indefinite-delivery, indefinite-quantity (IDIQ) contract. The selected contractor will provide for technologies refreshment, implementation, integration and transition to operations activities supporting existing and future Department of Defense Information Network (DODIN)/Defense Information Systems Network (DISN) networking capabilities. Agency Report (AR), Tab 1, RFP at 2. The solicitation informed offerors that orders placed under the TRI-GSM IDIQ could be fixed-price, fixed-price-incentive-fee, cost-reimbursable, cost-plus-fixed-fee, cost-plus-incentive-fee, and cost-plus-award-fee. *Id.* at 3-4. Along with the award of the IDIQ contract, the solicitation anticipated the award of two task orders, one for technologies refreshment of the DODIN/DISN infrastructure and the second for implementation of the DODIN/DISN infrastructure. *Id.* at 2.

The solicitation contemplated the evaluation of the following factors: cost/price, technical/management, and past performance. AR, Tab 1y, RFP Section M at 2-3. Technical/management was to be more important than past performance and both these factors, when combined, were significantly more important than cost/price. *Id.*

The technical/management factor included four equally rated subfactors: task order (TO) 0001 (technologies refreshment), TO 0002 (implementation), innovation and efficiency, and management approach. *Id.* at 3-4. As relevant here, for the management approach subfactor, offerors were to submit a draft task order management plan for each task order that addressed the offeror's plans for management, coordination, and synchronization. *Id.* at 4-5.

For past performance, the solicitation called for the evaluation of the quality of an offeror's record of recent and past performance information to determine the offeror's ability to successfully perform the TRI-GSM contract. *Id.* at 5.

For cost/price, the solicitation anticipated that the agency would evaluate the realism of each offeror's proposed costs applicable to the cost-reimbursable line items. This would include an evaluation of the extent to which the "proposed costs are sufficient for the work to be performed, reflective of a clear understanding of the requirements, and consistent with the unique methods of performance and materials described in the offeror's technical/management proposal." *Id.* at 7-8. For the fixed-price line items, the RFP reserved the agency's right to conduct a realism assessment.

After receiving initial proposals, DISA established a competitive range and conducted discussions with three offerors, including NOVA and CRS. Contracting Officer's Statement and Memorandum of Law at 13. On April 14, 2021, the agency sent an evaluation notice to NOVA representing that it had conducted "an independent analysis of proposed direct labor rates utilizing Economic Research Institute (ERI) data." AR, Tab 2b, Cost-Price Evaluation Notices at 17. Based on this analysis, the agency noted that 44 labor categories appeared to be "unrealistically low." *Id.* The agency asked NOVA to "review and provide revised rates, or provide rationale for the proposed rates." *Id* at 18. NOVA responded to this evaluation notice by providing revised rates, stating that it had "reviewed and revised [its] IDIQ ceiling rates based on additional research and [this] salary survey data, which is included with [its] revisions." AR, Tab 2c, NOVA Responses at 24.

On June 14, the agency sent a second evaluation notice to NOVA noting 42 labor category rates that "appear[ed] to be unrealistically low" and asking NOVA to revise the rates or provide a rationale for the proposed rates. AR, Tab 3b, NOVA Round 2 Evaluation Notices at 5-7. In addition, DISA provided a spreadsheet listing low and high salaries for each of the 95 labor categories included in the solicitation's pricing template. DISA referred to these as "data points" and used the low salary points as its basis for stating that NOVA's labor rates appeared low in the 42 labor categories listed in the evaluation notice. *Id.* at 40-43. In response, NOVA revised its labor category pricing further "as needed to meet requirements for cost realism." AR, Tab 3c, NOVA Responses to Round 2 Evaluation Notices at 8. NOVA did not revise 12 of its labor rates, however, explaining that "[t]he following positions were not determined to be unrealistically low based upon said research including the geographic location, education requirements, and years of experience requirements per RFP requirements." *Id.*

On July 28, the agency conducted a third round of discussions with offerors. The agency's evaluation notice to NOVA stated that the agency had "conducted an independent analysis of proposed direct labor rates utilizing Economic Research Institute (ERI) data at the Fort Meade, MD, location, as this is the location where most of the work will be performed in TOs 0001 and 0002." AR, Tab 4b, Round 3 Evaluation Notice at 4-5. The agency noted that NOVA used average national salaries in its ERI salary data, and did not provide the geographic location for its use of salary.com data. *Id.* The notice then listed 11 labor categories and asked NOVA to review and provide revised rates for these labor categories or "provide rationale how NOVA is able to hire at the lowe[st] rates for these labor categories to perform the work." *Id.* The agency further asked NOVA to explain its use of national average ERI data, "when the work in TOs 0001 and 0002 is being performed at locations with higher salaries." *Id.* In response to this evaluation notice, NOVA adjusted its salaries "to align within the government provided ranges" found in the evaluation notice. AR, Tab 4c, NOVA Response to Round 3 Evaluation Notice at 2.

The agency evaluated NOVA's and CRS's final proposals as follows:

	CRS	NOVA
Technical/Management¹		
TO 0001 (Technologies Refreshment)	Outstanding	Outstanding
TO 0002 (Implementation)	Good	Good
Innovation and Efficiency	Acceptable	Acceptable
Management Approach	Outstanding	Acceptable
Past Performance	Acceptable	Acceptable
Total Proposed Cost/Price	\$239,599,486	\$395,467,324
Total Evaluated Cost/Price	\$239,599,486	\$395,467,324

AR, Tab 10, Source Selection Decision Document (SSDD) at 118.

The source selection authority (SSA) found that CRS was technically superior to NOVA under the technical/management factor and equal with regard to the past performance factor. *Id.* at 129. With respect to the technical/management factor, the SSA found CRS to be superior to NOVA under both the task order 0001 and management approach subfactors, and technically equal for the task order 0002 and the innovation and efficiency subfactors. *Id.* Because CRS was both technically superior and also the lowest priced proposal, the agency determined that CRS's proposal represented the best value to the government. *Id.* at 130.

On December 13, the agency notified NOVA of its decision to award the contract to CRS. This protest followed.

DISCUSSION

The protester challenges multiple areas of the agency's evaluation of proposals and discussions with offerors. With respect to discussions, the protester contends that the agency conducted misleading discussions by repeatedly telling NOVA that multiple proposed labor category salaries appeared low without disclosing the fact that this conclusion was based on salary data from only one geographic location and also without disclosing the fact that NOVA's total proposed cost/price was higher than CRS's. In addition, the protester argues that the agency's evaluation failed to consider an organizational change impacting CRS despite a solicitation requirement to evaluate such changes. NOVA also challenges DISA's evaluation of the management approach subfactor, asserting that the agency evaluated proposals unreasonably and unequally. With respect to past performance, the protester argues that the agency unreasonably evaluated the relevance of CRS's submitted past performance examples.

¹ While the agency rated each proposal under the four technical subfactors, it did not assign proposals an overall technical/management rating.

While we do not address every argument raised by NOVA, we have considered each argument and find no basis to sustain the protest.²

Discussions

The protester contends that the agency's discussions were misleading. In this regard, the protester argues that the agency failed to disclose its real pricing concerns when it informed NOVA, over the course of three rounds of discussions, that 73 of NOVA's individual labor category rates appeared to be too low. The protester asserts that these discussion items caused NOVA to increase 73 of its labor category rates and ultimately increase its total cost/price from \$347,079,264 to \$395,467,324. To support this contention, NOVA provides a declaration from its president asserting that, but for these discussions, it would have lowered its proposed prices rather than raising them. See Comments & Supp. Protest, exh. 4, Declaration of NOVA President at 2.

The protester argues that these discussions were misleading because DISA did not disclose (1) that NOVA's total cost/price was higher than other offerors and also (2) that the basis of DISA's statements that NOVA's rates appeared low was salary data taken from one geographic location, Fort Meade, Maryland. The protester contends that using high-priced Fort Meade area labor rates was unreasonable, because the contract "would be performed at a variety of other locations around the country and world, and [labor rates] would be determined at the [t]ask [o]rder level."³ Comments & Supp.

² For example, the protester argues the agency's cost realism evaluation was unreasonable and unequal because CRS's "proposed costs could not have been sufficient for the work to be performed, could not have reflected a clear understanding of the requirements, and could not have been consistent with the CRS technical proposal." Protest at 23. We dismissed these arguments because they failed to provide a detailed statement of the legal and factual grounds of protest as required under our Bid Protest Regulations. 4 C.F.R. § 21.1(c)(4) and (f). In this respect, this protest ground effectively assumes, without providing further details or explanation, that CRS's low price meant it proposed an insufficient technical approach. Without such details, it is unclear whether this bare allegation is unsupported conjecture or is based on an informed calculation of the costs necessary to perform the requirement. Where, as here, a protester relies on bare assertion, without further supporting details or evidence, our Office will find that the protest ground essentially amounts to no more than speculation and does not meet the standard for a legally sufficient protest contemplated by our Regulations. *enrGies, Inc.*, B-408609.9, May 21, 2014, 2014 CPD ¶ 158 at 6.

³ Separately, the protester challenges the agency's use of salary data from only one locality (Fort Meade, Maryland) to assess the realism of all of NOVA's proposed labor rates. See Comments & Supp. Protest at 48. The protester contends that the use of this salary data amounted to the application of an undisclosed evaluation criterion. We find this argument to be untimely, however, because, as its basis for making this assertion, NOVA relied on language found in the agency's cost/price evaluation report

Protest at 7. The protester contends that, had it been informed that the agency's cost realism assessments were based on Fort Meade salary data, it could have explained why NOVA's lower rates, based on work performed outside the Fort Meade area, were reasonable.

The agency argues that its discussions were not misleading because DISA did not require NOVA to increase its labor rates, and instead provided NOVA with the exact salary range DISA used to assess the realism of offerors' labor rates. DISA asserts it asked NOVA to either raise its rates or justify the rates proposed. In the agency's view, NOVA chose to voluntarily increase its rates in response to the agency's discussion question rather than justify the rates it proposed. The agency further argues that it was not misleading for DISA to not disclose its reliance on Fort Meade salary data to create its cost evaluation salary range because it informed NOVA of the upper and lower bands of that range, thus providing the offeror with the agency's actual cost realism concerns.

When an agency engages in discussions with an offeror, the discussions must be meaningful, that is, sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision. *Hanford Envtl. Health Found.*, B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 8. An agency may not mislead an offeror through the framing of a discussion question into responding in a manner that does not address the agency's actual concerns, or otherwise misinform the offeror concerning a problem with its proposal. *Refinery Assocs. of Texas, Inc.*, B-410911.2, Mar. 18, 2015, 2015 CPD ¶ 116 at 6. The requirement that discussions be meaningful, however, does not obligate an agency to spoon-feed an offeror or to discuss every area where the proposal could be improved. FAR 15.306(d)(3); *Insignia-Spectrum, LLC*, B-406963.2, Sept. 19, 2012, 2012 CPD ¶ 304 at 5. In addition, there is no requirement for an agency to inform an offeror during discussions that its price may be too high, where the offeror's price is not considered excessive or unreasonable. *Per Aarsleff A/S; Copenhagen Arctic A/S; Greenland Contractors I/S*, B-410782 et al., Feb. 18, 2015, 2015 CPD ¶ 86 at 15.

that was substantially identical to language earlier provided during NOVA's debriefing. Compare *id.* (citing AR, Tab 9, Cost/Price Evaluation Report at 19) (stating that the cost/price team based their realism analysis on ERI data at the Fort Meade, Maryland location) with Protest, exh. 4, Debriefing Questions & Answers at 2 (containing substantially identical language).

Under our Bid Protest Regulations, protests based on other than alleged improprieties in a solicitation must be filed not later than 10 days after the protester knew or should have known of the basis for its protest, whichever is earlier, or within 10 days of the date a required debriefing is held. 4 C.F.R. § 21.2(a)(2). Despite NOVA receiving this information during its debriefing, instead of filing this argument with its initial protest, NOVA waited until after receiving the agency report in this proceeding to raise this protest ground. Accordingly, we dismiss this protest ground as untimely raised. *Id.*

Here, we conclude that discussions were not misleading. In this respect, we find that the agency disclosed its actual cost realism concerns to NOVA, providing it with the exact salary data points it used to reach those concerns. Although the protester contends that these data points were required minimums, the record reflects that NOVA was not coerced into raising its direct labor rates, but rather, made an independent business judgment about how to respond to the agency's discussion concerns. See *General Dynamics Info. Tech., Inc.*, B-417616.2 et al., March 31, 2020, 2020 CPD ¶ 132 at 12 (discussions were not misleading where protester made independent business judgment to raise rates in response to repeated evaluation notices). We note also that the agency did not make any upward adjustments to NOVA's labor costs or to its total cost/price. AR, Tab 10, SSDD at 118. Indeed, the protester, in some instances, chose not to raise its rates. See Comments & Supp. Protest at 17. And, although NOVA's total cost/price was higher than other offerors, we do not find that the agency was obligated to inform NOVA of this fact since its price was not considered excessive or unreasonable. *Per Aarsleff A/S; Copenhagen Arctic A/S; Greenland Contractors I/S, supra.*

Nor do we agree with the protester that the agency should have provided NOVA with the basis for its cost realism calculations. In our view, the agency was under no obligation to provide NOVA with a detailed description of the methodology it used to assess the realism of proposed labor rates, and instead the agency acted reasonably when it provided the offeror with the actual salary numbers it had derived. Ultimately, it was the offeror's responsibility to recognize where it disagreed with the agency's cost realism conclusions and explain why its own salary calculations were correct. As such, this protest ground is denied.

Past Performance Evaluation

NOVA challenges several aspects of DISA's evaluation of CRS's past performance. As an initial matter, the protester argues that the agency's past performance evaluation failed to consider a significant CRS organizational change despite a solicitation requirement for the agency to do so. In this regard, the RFP contained a requirement for offerors to disclose certain organizational changes:

Many companies have acquired, been acquired by, or otherwise merged with other companies, and/or reorganized their divisions, business groups, subsidiary companies, etc. In many cases, these changes have taken place during the time of performance of relevant past efforts or between conclusion of recent past efforts and this source selection. As a result, it is sometimes difficult to determine what past performance is relevant to this procurement. To facilitate this relevancy determination, include in this proposal volume a "roadmap" describing all such changes in the organization of your company. A pamphlet or other commercial document describing such reorganizations may suffice. As part of this explanation, show how these changes impact the relevance of any efforts identified for past performance evaluation/confidence assessment. Since the

Government intends to consider past performance information provided by other sources as well as that provided by the offerors, the “roadmap” should be both specifically applicable to the efforts identified and general enough to apply to efforts on which the Government receives information from other sources.

AR, Tab 1I, RFP Section L at 14-15.

In its proposal, CRS provided information about its purchase of the assets of a contractor performing the Communications Center/Gateways & Satellite Systems Engineering & Technical Assistance (SETA) contract for DISA, under which CRS originally acted as a subcontractor. AR, Tab 6b, CRS Technical/Management Proposal at 12. Specifically, CRS’s proposal stated “[a]lthough not a change to CRS’s organizational structure, we acquired the DISA SETA contract after the incumbent contractor of the contract was abruptly removed for cause.” *Id.*

The protester argues that the purchase of the assets of this contract was a significant acquisition that, consistent with the above-quoted solicitation clause, should have been taken into consideration as part of the agency’s past performance evaluation. NOVA asserts that despite this requirement, the agency failed to document any consideration of this change. In the protester’s view, this led to the agency not considering “the timing of CRS’s transition from subcontractor to prime contractor and its impact on the scope of CRS’s performance responsibilities”; specifically the agency failed to consider the impact resulting from most of CRS’s performance of the contract as a subcontractor with CRS only becoming the prime contractor in late 2019. Supp. Comments at 7; Comments & Supp. Protest at 40. NOVA contends that had the agency properly considered this information, it would have concluded that the DISA SETA contract was not relevant and assigned CRS’s past performance an unknown, i.e., neutral, rating. Supp. Comments at 3.

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 evaluation ratings. *MFM Lamey Group, LLC*, B-402377, Mar. 25, 2010, 2010 CPD ¶ 81 at 10. Where a protester challenges an agency’s evaluation of past performance, we will review the evaluation to determine if it was reasonable and consistent with the solicitation’s evaluation criteria and procurement statutes and regulations, and to ensure that it is adequately documented. *Veteran Technologists Corp.*, B-413614.3, B-413614.5, Nov. 29, 2016, 2016 CPD ¶ 341 at 6.

Here, we find reasonable the agency’s determination that the purchase of the assets used to perform “the SETA contract was not an organizational structure change that was contemplated by the RFP.” Supp. Memorandum of Law at 22. As the agency notes, the solicitation provided specific examples of organizational changes to be considered, including, for example, the acquisition or merger of companies or the reorganization of business divisions and subsidiary companies. *Id.* at 23; AR, Tab 1I, RFP Section L at 14. The examples listed in the solicitation, however, did not include

the purchase of the assets used to perform the contract. While the protester argues that such a contract acquisition should nonetheless have been considered since the listed examples were not exclusive, we find nothing unreasonable about the agency's conclusion that the acquisition of the assets of a contract is not the type of "organizational change" envisioned by the solicitation.

In addition, we note that the agency did consider the purchase of the contract assets in its evaluation of CRS's performance under the DISA SETA contract. See AR, Tab 8, CRS Past Performance Consensus Report at 5-6 (noting that CRS "began working as a subcontractor under the previous bankrupt contractor on the task order while the [approval of the purchase] was getting worked out"). Indeed, DISA positively cited the fact that the "offeror was awarded as the prime within a month and was able to complete the work." *Id.* at 6. Accordingly, we find that the protester has not demonstrated that the agency's past performance evaluation was unreasonable in this regard.

The protester challenges additional areas of the agency's evaluation of the relevancy of CRS's past performance. In this regard, the protester asserts that the three contracts submitted by CRS (consisting of one contract performed by CRS and two performed by CRS's proposed subcontractor), "were significantly lower in dollar value compared to the dollar value of the TRI-GSM contract, and CRS's contract lacked the complexity of the requirements of the TRI-GSM contract." Comments & Supp. Protest at 28. NOVA notes, for example, that CRS's DISA SETA contract had a task order value of \$18.2 million, which is approximately five percent of the value of the TRI-GSM contract. *Id.* at 29 (quoting AR, Tab 8, Past Performance Consensus Report at 5). The protester faults the agency's evaluation for brushing aside these concerns to find the contracts relevant based on other aspects of their scope, magnitude, and complexity. *Id.* at 30.

Here, we find that the agency reasonably concluded that the submitted contracts were relevant to the instant effort despite their dollar value being "significantly less than the anticipated value of TRI-GSM." AR, Tab 8, Past Performance Consensus Report at 5. In this respect, the agency's evaluation considered not only the dollar value of all three contracts but also looked at additional points of comparison, for example, the number of global sites being managed and the scope of services being provided. While the protester disagrees with the agency's decision to credit these additional points of comparison, we find no reason to question the agency's judgment in this regard.⁴

⁴ For example, the agency cited the fact that CRS maintained a satellite communication system at 82 worldwide sites, located both within the continental United States and outside the continental United States. See AR, Tab 8, Past Performance Consensus Report at 5. The protester asserts that this experience should nonetheless have been afforded little weight since there was no indication that CRS performed these duties onsite rather than from a remote location. See Comments & Supp. Protest at 30. We are not persuaded, however, that, even if this is correct, it would mean the agency acted unreasonably in crediting the fact that CRS provided support to sites across the globe.

In addition, we note that our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was competitively prejudiced by the agency's actions, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. *Raytheon Co.*, B-409651, B-409651.2, July 9, 2014, 2014 CPD ¶ 207 at 17. Here, even if the protester was correct that CRS's past performance should have been judged to be not relevant, this would simply have led to CRS's past performance being rated as "unknown (neutral)" rather than as acceptable. AR, Tab 1y, RFP Section M at 6. In such a circumstance, CRS would still possess a far lower cost/price along with a superior proposal under the technical factor. As such, NOVA has not demonstrated that, but for the agency's actions, it would have a substantial chance of receiving the award.

Management Approach Evaluation

The protester challenges several aspects of the agency's evaluation of CRS's management approach. As an initial matter, NOVA argues that the agency's technical evaluation ignored the fact that "CRS fails to address its role as prime contractor or the degree to which the proposal highlights the significant role that [CRS's subcontractor] will play." Comments & Supp. Protest at 35. The protester asserts that this was unreasonable because the solicitation required the agency's management approach evaluation to consider each offeror's plan for management, coordination, and synchronization. *Id.* at 33 (citing AR, Tab 1y, RFP Section M at 5).

The evaluation of technical proposals is a matter within an agency's discretion. *Acquisition Servs. Corp.*, B-409570.2, June 18, 2014, 2014 CPD ¶ 197 at 7. In reviewing an agency's evaluation, we will not reevaluate technical proposals, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and with procurement statutes and regulations. *Technology & Telecomms. Consultants, Inc.*, B-415029, Oct. 16, 2017, 2017 CPD ¶ 320 at 3. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that an evaluation was improper. *Technica LLC*, B-413546.4, B-413546.5, July 10, 2017, 2017 CPD ¶ 217 at 5.

Here, we find the evaluation of CRS's management approach to be reasonable and consistent with the solicitation's evaluation criteria. As the agency notes, the solicitation did not prohibit offerors from relying on a subcontractor to provide significant aspects of contract performance. And, while the solicitation required offerors to submit a task order management plan that addressed management, coordination, and synchronization, see AR, Tab 1y, RFP Section M at 4-5, CRS's proposal met this requirement. In this respect, its proposal included a detailed description of its

In this regard, the protester has not provided anything beyond conclusory statements to demonstrate that CRS's experience providing support (whether remote or otherwise) to multiple global locations was not relevant to the instant requirement to provide support to DISA-provided networks and infrastructure on a global basis.

management structure and practices, its coordination and communication among team members, and its efforts to control and manage resources and costs as part of its synchronization effort. See AR, Tab 6a, CRS Technical-Management Volume at 89-111. While the protester faults CRS for not including a more detailed delineation in its proposal of the tasks to be performed by CRS versus those to be performed by CRS's subcontractor, we are not persuaded that such a detailed delineation was required by the solicitation.

In addition, the protester argues that the agency treated offerors unequally by crediting CRS's proposal with two strengths for CRS's approaches to coordination within task orders 0001 and 0002. In this respect, for both task orders, DISA noted that "[b]y regularly coordinating the activities of each [task order] amongst the [task order] leads, the team can identify efficiencies in executing the work to reduce the number of visits required to a given site." AR, Tab 7, CRS Technical-Management Consensus Report at 15, 17. The protester argues that it proposed a similar approach but did not receive a similar strength or strengths. In particular, NOVA asserts that it "proposed a similar [DELETED] communication approach aimed at improving efficient performance of the task order," and also proposed to conduct regular [DELETED] meetings.⁵ Comments & Supp. Protest at 43-44.

We find no merit to this argument. Where a protester alleges that an evaluation is the product of unequal treatment, the protester must show that the difference in the evaluation result was the result of unequal treatment, rather than differences in the offerors' proposals. See *Beretta USA Corp.*, B-406376.2, B-406376.3, July 12, 2013, 2013 CPD ¶ 186 at 6. Here, we find that differences in the offerors' proposals reasonably explain the different evaluation result.

In this regard, the agency provided a declaration from the technical evaluation team (TET) lead explaining DISA's reason for evaluating CRS's [DELETED] approach as meriting strengths, but not reaching a similar finding with respect to NOVA's approach. See AR, Tab 15, TET Lead Dec. The TET lead explains that the agency's assessments of strengths took into account that CRS detailed what would be discussed at its proposed [DELETED] meetings and how CRS would identify efficiencies so as to reduce the number of site visits, resulting in a decrease in the implementation time and a reduction in cost. See *id.* at 2 (citing AR, Tab 6a, CRS Technical-Management

⁵ In its supplemental comments, NOVA also asserts that it proposed various features, such as [DELETED], that would have resulted in a reduction in site visits yet did not receive a strength for doing so. See Supp. Comments at 24. This argument was raised for the first time, however, in NOVA's February 28 supplemental comments, despite being based on information learned from the agency report, provided on February 4. We find that the piecemeal presentation of this protest argument does not satisfy our Office's timeliness rules. See *Synergy Solutions, Inc.*, B-413974.3, June 15, 2017, 2017 CPD ¶ 332 at 7 (our Regulations do not contemplate the unwarranted piecemeal presentation or development of protest issues). As such, this argument is dismissed.

Proposal at 70). The TET noted that, by contrast, NOVA's [DELETED] communication protocol did not contain this same level of detail about how NOVA would achieve benefits exceeding the solicitation requirements, for example only using general language to claim benefits such as quicker schedule de-confliction and improvement in the ability to share critical resources. *Id.* at 3; see also Comments & Supp. Protest, attach. 10, NOVA Technical/Management Proposal at 63.⁶ We find this explanation to be reasonable and consistent with the evaluation record.

Last, the protester contends that the agency failed to adequately evaluate CRS's proposal under element B of the management approach subfactor. Element B required the agency to evaluate each offeror's basis of estimate and work, which outlines the labor supporting six of the performance work statement tasks for task orders 0001 and 0002. AR, Tab 1y, RFP Section M at 5. The protester contends that CRS's task order 0001 labor hours ([DELETED] total labor hours) were far lower than the hours proposed by NOVA ([DELETED] labor hours), a disparity that indicates DISA did not perform "any technical realism analysis of this aspect of the CRS proposal." Supp. Comments at 27.

We find that the protester has not met its burden to show that the agency's technical evaluation was unreasonable. In this respect, although the protester notes that its proposal included a far higher number of task order 0001 labor hours than CRS's proposal, it did not provide any further support for its assertion that the agency's evaluation of this subfactor element was flawed. For example, the protester did not provide specific facts or allegations supporting the assertion that the hours proposed by CRS were unrealistic or that the agency's cost realism analysis was unreasonable. Accordingly, while the protester argues that the disparity between the two proposals should have been considered during the agency's technical evaluation, the protester has failed to demonstrate that the agency's failure to do so was unreasonable.

The protest is denied.

Edda Emmanuelli Perez
General Counsel

⁶ The protester attached numerous exhibits to its comments and supplemental protest filing, including proposal excerpts such as attachment 10, NOVA's Technical/Management Proposal. The agency requests that we not consider these documents as part of the record, asserting that they represent an improper attempt by NOVA to self-supplement the administrative record. We decline to reject the records. We find that these documents are relevant to NOVA's protest grounds and see no reason to disregard them simply because they were provided by NOVA rather than the agency.