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# Decision

**Matter of:** Zin Technologies, Inc.

**File:** B-422405; B-422405.2

**Date:** June 13, 2024

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## DIGEST

1. Protest challenging agency's assessment of weaknesses to the mission suitability volume of the protester's proposal is denied where the record demonstrates the weaknesses were reasonably assessed.
  2. Protest alleging the agency engaged in discussions that were not meaningful and unequal is denied where the record demonstrates the agency's conduct of discussions was reasonable and treated offerors in an even-handed manner.
  3. Protest challenging the agency's evaluation of proposals under the relevant experience and past performance factor is denied where the agency's evaluation was reasonable, consistent with the terms of the solicitation, and adequately documented.
  4. Protest challenging the agency's best-value determination is denied where the record demonstrates the source selection authority's decision was based on a reasonable underlying evaluation.
  5. Protest alleging the agency failed to mitigate an organizational conflict of interest (OCI) with respect to the awardee's major subcontractor is denied where the protester has failed to allege hard facts indicating the existence of a potential OCI.
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## DECISION

Zin Technologies, Inc., a small, disadvantaged business of Cleveland, Ohio, protests the award of a contract to Sierra Lobo, Inc., a small disadvantaged business of Fremont, Ohio, under request for proposals (RFP) No. 80GRC022R0016, issued by the National Aeronautics and Space Administration (NASA) for various space flight system development and operations services at the Glenn Research Center in Cleveland, Ohio. The protester primarily contends that the agency miscalculated proposals under the mission suitability and relevant experience and past performance factors, conducted flawed discussions with offerors, and failed to mitigate a potential organizational conflict of interest (OCI) involving the awardee's major subcontractor.

We deny the protest.

## BACKGROUND

On March 16, 2023, NASA issued the RFP pursuant to the procedures of Federal Acquisition Regulation (FAR) part 15, seeking proposals to perform the requirements of its space flight systems development and operations contract III (SpaceDOC III).<sup>1</sup> COS at 1; Agency Report (AR), Tab 4b, RFP at 154; AR, Tab 4c, Statement of Work (SOW) at 1, 4.<sup>2</sup> The agency anticipated awarding a contract consisting of a cost-plus-fixed-fee (CPFF) "Core" portion and a CPFF and fixed-price indefinite-delivery, indefinite-quantity (IDIQ) portion,<sup>3</sup> for a 3-year base period with two 2-year options, and a possible 6-month extension. COS at 1.

The RFP advised that NASA intended to award the contract to the "responsible [o]fferor whose proposal meets the requirements of the solicitation and provides the best value to the [g]overnment based on the weighting of the evaluation factors" identified in the RFP. RFP at 155. The RFP's evaluation factors, listed in descending order of importance, were: (1) mission suitability; (2) cost/price; and (3) relevant experience and

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<sup>1</sup> SpaceDOC III is a follow-on acquisition to an existing contract, SpaceDOC II, which is being performed by the protester, Zin Technologies. Contracting Officer's Statement (COS) at 1.

<sup>2</sup> The RFP was amended four times; all citations to the RFP refer to the final version of the RFP reflecting all amendments unless otherwise indicated. All citations to page numbers in this decision refer to the Adobe PDF page numbers unless otherwise indicated.

<sup>3</sup> The CPFF "Core" portion of the contract was to include contract line item numbers (CLINs) 0002-0013 (including any exercised options), which covered various contractor functions such as project management organization, sustainment engineering mission integration and operations, and concept, design, and hardware development. RFP at 1. The CPFF and fixed-price IDIQ portion of the contract was to include CLIN 0014, which covered individual delivery orders and would be determined based on the scope and complexity of the order requirement. *Id.* at 1, 4.

past performance. *Id.* at 168. The RFP informed offerors that when combined, the non-price factors were significantly more important than the cost/price factor. *Id.*

The RFP announced an adjectival and points rating scheme for NASA's evaluation of the non-price factors. *Id.* at 155-156, 166-167. For the mission suitability factor, an offeror's proposal would be assessed points under each of three subfactors depending on the proposal's merit, including any strengths, weaknesses, or deficiencies assessed, for a total score of 1,000 points.<sup>4</sup> *Id.* at 168. A proposal's mission suitability point score corresponded with an adjectival rating of poor, fair, good, very good, or excellent. *Id.* at 156. For the relevant experience and past performance factor, an offeror's proposal could receive a confidence rating of neutral, very low, low, moderate, high, or very high, depending on its performance record and the relevancy of the experience examples provided. *Id.* at 166-167.

NASA received timely proposals from two offerors, Zin Technologies and Sierra Lobo, by the May 3, 2023, deadline for receipt of proposals. COS at 4. After evaluating initial proposals, the agency entered into discussions with both offerors, as permitted by the RFP. *Id.*; RFP at 107. As described by the agency, the discussions consisted of competitive range notification letters sent to each offeror on September 1, which included "(1) every weakness and significant weakness finding that the SEB [source evaluation board] assigned the [o]fferor's initial proposal under the [m]ission [s]uitability [f]actor; (2) all cost concerns identified with respect to the proposal; (3) any past performance topics identified related to the proposal; and (4) several administrative topics." COS at 4; see AR Tab 9 Zin Technologies Discussions Letter; AR Tab 10 Sierra Lobo Discussions Letter.

NASA additionally held a two-hour, in-person meeting with each offeror on September 18, during which it provided a presentation and accompanying slides discussing the content of the discussions letters. COS at 4. The presentations also established the procedures for offerors to submit final proposal revisions (FPRs), and the agency specifically advised that offerors could change any aspect of their original proposals in response to the discussions points raised, but that the changes would supersede the original submissions and could result in new or changed findings. *E.g.*, AR, Tab 11, Zin Technologies Discussions Slides at 20. In a similar vein, the agency advised offerors "against making unsubstantiated changes" to their proposals. *Id.*

After receiving FPRs from both Zin Technologies and Sierra Lobo, NASA's SEB conducted its final evaluation of proposals. COS at 5. The agency's evaluation yielded the following results:

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<sup>4</sup> The three subfactors under the mission suitability factor were understanding technical requirements, product assurance, and management plan and approach. RFP at 127.

	Zin Tech.	Sierra Lobo
<b>Mission Suitability</b>	842/1000	878/1000
<b>Cost/Price</b>	\$271,257,619	\$282,159,744
<b>Rel. Experience/Past Perf. Level of Confidence</b>	Moderate Level	Very High Level

AR, Tab 17, SEB Briefing to Source Selection Authority (SSA) at 17. The SEB conducted its final briefing with the SSA on November 16, providing its findings and the evaluation results as documented. *Id.* at 12; AR, Tab 18, Source Selection Statement at 11. The SSA stated that in addition to receiving the briefing, the SSA independently reviewed and concurred with the SEB’s findings. AR, Tab 18, Source Selection Statement at 11. In arriving at a best-value decision, the SSA noted that Sierra Lobo’s proposal presented “a distinct advantage over ZIN [Technologies]’s proposal under the most important [m]ission [s]uitability [f]actor[.]” and that the awardee’s proposal also presented a significant advantage under the relevant experience and past performance factor. *Id.* at 16. The SSA concluded that the “very slight cost savings” presented by the protester’s proposal did not justify foregoing the “exceptional technical value and superior record of past performance presented” by the awardee’s proposal. *Id.* Accordingly, the SSA selected Sierra Lobo for award of the contract. *Id.* at 17. This protest followed.

## DISCUSSION

Zin Technologies raises various challenges to NASA’s conduct of the procurement. The protester alleges that the agency unreasonably and disparately evaluated proposals under the mission suitability and relevant experience and past performance factors, engaged in flawed discussions with offerors, conducted an unreasonable best-value determination, and failed to identify and mitigate an OCI involving one of Sierra Lobo’s major subcontractors. Comments & Supp. Protest at 5-29. We address the protester’s arguments in turn below.

We note at the outset that in reviewing a protest challenging an agency’s evaluation, our Office will not reevaluate proposals nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency’s discretion. *SeaTech Security Sols.; Apogee Grp., LLC*, B-419969.6, B-419969.7, Apr. 21, 2023, 2023 CPD ¶ 104 at 11. Rather, we will review the record to determine whether the agency’s evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. *Systems Implementers, Inc.; Transcend Tech. Sys., LLC*, B-418963.5 *et al.*, June 1, 2022, 2022 CPD ¶ 138 at 10. A protester’s disagreement with the agency’s evaluation judgments, without more, does not render those judgments unreasonable. *Id.*

While our decision does not address every argument raised by the protester, our Office has considered them all, and find that none provides a basis on which to sustain the protest.

## Mission Suitability Factor

Zin Technologies argues that under the mission suitability factor, NASA unreasonably evaluated Zin Technologies' proposal in assessing it a number of weaknesses and conducted discussions that were not meaningful, misleading, and unequal. We first address the challenge to the evaluation of Zin Technologies' proposal and then discuss the arguments regarding discussions.

### Evaluation of Zin Technologies' Proposal

The protester challenges the agency's assessment of multiple weaknesses to its FPR, arguing in part that the weaknesses were unreasonably assessed, that the agency's bases for assigning some of the weaknesses were contradicted by the contents of its proposal, and that some of the weaknesses represented *de minimis* error or were otherwise merely "typographical" in nature. Protest at 13-15.

NASA argues that its assessment of weaknesses to Zin Technologies' proposal under the mission suitability factor was reasonable and consistent with the terms of the solicitation. Memorandum of Law (MOL) at 6, 9. The agency additionally contends that the protester's characterization of certain weaknesses as *de minimis* or merely typographical is misplaced, and that instead, the agency viewed these aspects of the protester's proposal as "a lack of understanding and/or the inability to demonstrate adequate qualifications." *Id.* at 7. The agency also maintains that the weaknesses resulted in part from changes to the protester's proposal introduced in its FPR that the protester failed to substantiate. *Id.*

We have reviewed all of the protester's arguments challenging the weaknesses assessed to its proposal and find that none provide a reason to sustain the protest. As noted above, the mission suitability factor had three subfactors: understanding technical requirements, product assurance, and management plan and approach. RFP at 126. Each of these subfactors had various components that offerors were required to address in their proposals.<sup>5</sup> *Id.* Under the understanding technical requirements subfactor, for component UR1, representative base orders, offerors were required to provide responses to "hypothetical" base orders, which the agency would then evaluate to better understand offerors' technical approaches for the current requirement. *Id.* at 127. For three of the hypothetical base orders, offerors were required to identify and propose mitigation strategies for risks the offeror identified with performance of the hypothetical order.<sup>6</sup> *Id.* at 127-128. The RFP also advised that under the

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<sup>5</sup> The RFP identifies these subfactor components by abbreviation and number. For example, the first component of the understanding technical requirements subfactor was titled representative base orders and was identified as "UR1." RFP at 126.

<sup>6</sup> With regard to risk mitigation and management, the statement of work referred offerors to Glenn Research Center Policies and Procedures directive 8000.4B, Risk Management. The protester explained in its proposal that its risk management

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understanding technical requirements subfactor, for component UR3, understanding the approach to meeting the technical and engineering requirements, offerors should “describe the approach for risk mitigation during flight hardware and software development by utilizing ground-based systems” for the current procurement. *Id.* at 129.

The RFP provided that offerors would be evaluated under the understanding technical requirements subfactor on the “effectiveness, comprehensiveness, reasonableness, understanding, adequacy, and benefits of their responses . . . for each [b]ase [o]rder” with respect to UR1, and additionally on the “adequacy, effectiveness, and completeness of their approach for risk mitigation” with respect to UR3. *Id.* at 158. The solicitation also cautioned that the agency’s evaluation of proposals would be made on the basis “of the material submitted and substantiated in each proposal[,]” and that “[a] lack of clarity or specificity in an [o]fferor’s proposal may be interpreted as a lack of understanding and/or the inability to demonstrate adequate qualifications.” *Id.* at 154.

In evaluating Zin Technologies’ initial proposal, NASA identified two weaknesses under the understanding technical requirements subfactor. AR, Tab 9, Zin Technologies Discussions Letter at 3. One of the weaknesses concerned both component UR1, representative base orders, and UR3, understanding the approach to meeting technical and engineering requirements.<sup>7</sup> During discussions, the agency advised the protester that it assessed this weakness because the proposal “indicated a lack of understanding of risk mitigation” in the hypothetical base orders in multiple respects. *Id.* For example, the agency explained that proposed risk mitigation strategies “took credit for reducing both likelihood and consequences [of risk] where it appeared that only one [of those risk components] would be impacted” by the proposed mitigation strategy. *Id.* The agency

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approach was submitted in accordance with the agency’s 8000.4 risk management directive. AR, Tab 15a, Zin Technologies FPR at 111. This directive includes a strategy for risk management that consists of identifying risks by both the likelihood of their occurrence, and the severity of their consequences, which together equate to an overall risk assessment of low, moderate, or high. Likelihood and consequence (“L” and “C”) are each assigned a value of one to five (with lower numbers representing lower magnitude), resulting in an overall L x C risk number. For example, a 1 x 5 risk identifies a risk that has low likelihood of occurring, but with severe consequences. Each possible L x C combination is then assigned an overall risk level with a corresponding color code, including: low risk (green), moderate risk (yellow), and high risk (red). Using the example above, a 1 x 5 risk merits an overall moderate level of risk with color code yellow. The protester presented its risk identification and mitigation strategies using this L x C and corresponding color code approach in various different tables in its proposal. See, e.g., AR, Tab 7, Zin Technologies Initial Proposal at 23.

<sup>7</sup> The agency credited the protester’s response to the other weakness assessed under this subfactor and removed the weakness in its final evaluation of FPRs; we therefore will not discuss that second weakness here. See AR, Tab 17, SSEB Briefing to SSA at 141.

also explained that the protester's approach to "add [] [DELETED] to mitigate [DELETED]" was actually an acceptance of risk, and thus constituted an adverse finding. *Id.*

With regard to this same weakness, NASA also explained that Zin Technologies' proposed risk mitigation strategy of developing [DELETED] would actually add risk. NASA explained that "[DELETED]."<sup>8</sup> *Id.* As previously stated, the agency explained that offerors could change any aspect of their original proposal but cautioned that "any changes will supersede" the original proposal, and also "cautioned against making unsubstantiated changes."<sup>9</sup> AR, Tab 11, Zin Technologies Discussions Charts at 20.

Zin Technologies submitted its FPR, which included substantive changes to its proposal to address the weakness described above. In one such change, the protester updated its risk identification and mitigation strategies tables for the hypothetical base orders, including updating the magnitude of likelihood and consequence (L x C) associated with certain identified risks, and updating the proposed mitigation strategy language. See, e.g., AR, Tab 7, Zin Technologies Initial Proposal at 23; AR, Tab 15a, Zin Technologies FPR at 23. For example, the protester updated table 1-6 in its proposal, changing an identified risk labeled [DELETED]. The updated risk was [DELETED]. *Id.*

Zin Technologies also updated a graphic in figure 1-18 in the mission suitability volume of its proposal, with the graphic changed to indicate that the protester would [DELETED]. See AR, Tab 7, Zin Technologies Initial Proposal at 58; AR, Tab 15a, Zin Technologies FPR at 59. The protester further added a narrative section titled "[DELETED]," which discussed its approach to [DELETED]. AR, Tab 15a, Zin Technologies FPR at 60.

In its final evaluation of proposals, NASA assessed a weakness to Zin Technologies' FPR pertaining to the above-mentioned areas. The agency explained that the protester's FPR still "indicated a lack of understanding of risk mitigation" in the hypothetical base orders and hardware development, again in multiple respects. AR, Tab 17, SSEB Briefing to SSA at 66. With regard to the updates to the protester's risk mitigation charts, the agency explained that the risk color coding utilized by the protester was inconsistent with the risk management directive the protester utilized in its approach. *Id.* at 141. In this regard, the protester identified multiple risks as "low risk"

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<sup>8</sup> The phrase "qual units" refers to "qualification units" which the protester's initial proposal stated would be used to [DELETED]. AR, Tab 7, Zin Technologies Initial Proposal at 59. In responding to the protest, the agency further explains that this weakness was assessed because [DELETED]. COS at 12.

<sup>9</sup> The discussions points mentioned here do not encompass all points raised by the agency under the understanding technical requirements subfactor. For the two weaknesses assessed for this subfactor, the agency included a total of six specific bullet points and accompanying summary narratives explaining the weaknesses. See AR, Tab 9, Zin Technologies Discussions Letter at 3.

that should have been “medium risk.” *Id.* For example, where the protester revised risk 3 from 3 x 3 in the initial proposal to 1 x 5 in the FPR, it should have color coded this risk yellow, indicating a moderate risk, as opposed to green. The agency explained this error demonstrated a “lack of understanding of risk analysis.” *Id.* at 66. With regard to the other aspect of the weakness, the protester’s update to figure 1-18, indicating it would [DELETED], the SEB found the protester failed to substantiate this change in its proposal, increasing the risk of unsuccessful contract performance. *Id.*

As previously stated, Zin Technologies argues that both aspects of the weakness were unreasonably assessed. The protester contends these errors in the FPR were “typographical,” and that NASA’s assessment of a weakness was unreasonable because the errors did not represent “lack of clarity,” as the agency “understood precisely what [the protester] intended as to both issues.” Protest at 13.

Based on our review of the record, we find no basis to disturb the agency’s judgment with respect to this weakness. The RFP specifically cautioned that NASA’s evaluation of proposals would be made on the basis of “material submitted and substantiated” and that a “lack of clarity” may be interpreted as a lack of understanding. RFP at 154. In its proposal, the protester stated that it would utilize a risk mitigation scheme consistent with an agency directive that included a process for assigning identified risks a score based on the likelihood of their occurrence and the severity of consequence, correlating to an overall color-coded risk score of low, moderate, or high. The protester made changes to its proposal in its FPR submission where it updated the scores associated with some of the risks, which changed its overall assessment of that particular risk. However, the protester’s assessment of overall level of risk did not correlate with its own assessment of likelihood and consequence. The agency determined that these mistakes indicated a lack of understanding of the risk analysis process, and we find no basis to disturb the agency’s judgment in this regard. While the protester contends these errors were just typographical, we find that the agency reasonably concluded that the lack of clarity with regard to the protester’s understanding of risk level may indicate a lack of understanding.

Similarly, we find no basis to question the other aspect of the weakness assessed by NASA. As noted above, Zin Technologies changed its proposal to specify [DELETED]. However, the narrative text in the protester’s FPR fails to substantiate the change in any manner, or otherwise provide detail on how the change in [DELETED] would fit with the protester’s approach, nor does the narrative actually discuss prototypes in the relevant section at all.<sup>10</sup> The RFP advised that the agency’s evaluation would be based on

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<sup>10</sup> The protester argues that the agency “completely ignores the contents” of its proposal where it “clearly discusses the schedule for early development of prototypes.” Comments & Supp. Protest at 7. However, in support of its argument, the protester cites a paragraph from its proposal called “[m]ockups/[m]odels/[t]est beds and [b]read/[b]rassboards,” which was a completely separate and distinct paragraph from the “[q]ual/[p]rototype [u]nits” paragraph where it made its change. Moreover, this  
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material “substantiated,” and the agency reminded offerors of this during discussions and through instructions regarding the submission of FPRs. The record demonstrates this change was not substantiated by any accompanying explanation, and we accordingly find reasonable the agency’s assessment of a weakness in this regard.

As another example, under the mission suitability factor, for the management plan and approach subfactor, offerors were instructed to address project plan development and project management and control practices, methods to develop and track costs, and methods to develop and track schedules, among other things. RFP at 132, 133. In addressing these, offerors had to submit a separate “SpaceDOC III Management Plan” which was required to include all information described in the solicitation’s data item description, program management-01 (DID# PM-01) document. *Id.* at 109, 132. The referenced PM-01 document required offerors’ management plans to provide “information giving NASA insight into staffing, organizational structure, approaches, and processes used to manage activities across the SpaceDOC III contract” including “[m]anagement support system method, tools, and implementation.” AR, Tab 2b, RFP attach. J1B Contract Data Requirements List at 18. The RFP advised that offerors would be evaluated on the reasonableness, effectiveness, and completion of their management plans. RFP at 161.

In evaluating Zin Technologies initial proposal, NASA assessed two weaknesses and a significant weakness under the management plan and approach subfactor.<sup>11</sup> AR, Tab 9, Zin Technologies Discussions Letter at 3-5. For the significant weakness, the agency explained that the protester’s proposal included “a highly ineffective and incomplete SpaceDOC III Management Plan,” and identified five additional bullet points explaining its reasoning. *Id.* at 4-5. For example, the agency found that the protester’s management plan did “not provide information on the various [management support] tools]” proposed by the protester, and also failed to explain which of its proposed tools would be accessible to the government during performance of the contract. *Id.* at 4. The agency also explained that the management plan referenced other parts of its proposal, such as the general mission suitability volume, that would not be available for agency use after award of the contract. *Id.* at 4-5.

Zin Technologies’ FPR included changes to address the concerns identified by NASA during discussions. For example, the protester added a table to its management plan that described ten management support tools the protester intended to use in its “Zin Data Management System.” AR, Tab 15b, Zin Technologies Management Plan at 21-22. The proposal stated in the accompanying narrative that a “description of all

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paragraph was intended to address a different mitigation strategy. We therefore find the protester’s argument in this regard unavailing.

<sup>11</sup> The agency credited the protester’s FPR with resolving the two weaknesses assessed under this subfactor, but only changed the significant weakness to a weakness. See AR, Tab 17, SSEB Briefing to SSA at 69. Accordingly, we discuss only the significant weakness initially assessed.

management support tools (access available to both Zin [Technologies] and [agency] management) is provided in [the table].” *Id.* at 21. The narrative identified specific tools from the table that the agency would have access to, such as [DELETED]. *Id.*

In its final evaluation of FPRs, NASA upgraded the significant weakness assessed to the protester’s proposal under this subfactor to a weakness. The agency explained that the protester’s proposal changes “adequately” described the ten proposed management tools in its management plan, but that the protester’s plan still did not contain a realistic description of the level of government access to its management tools and that there was a “lack of clarity regarding which tools the [g]overnment would have access to.” AR, Tab 17, SEB Briefing to SSA at 144, 173. The agency also noted that the protester’s response failed to address the agency’s concern that the management plan referenced other areas of its proposal that would not be available to the agency’s SpaceDOC III team after contract award. *Id.* at 173.

Based on our review of the record, we find no basis to disturb the agency’s assessment of this weakness. While the agency credited the protester for providing greater detail about the suite of management support tools it proposed, the agency still found that the protester’s FPR lacked clarity regarding access to the management support tools, and additionally failed to address other points raised in discussions. Specifically, the agency found that the protester’s FPR was unclear, and suggested an unrealistic level of agency access to the protester’s management support tools, which included tools relating to [DELETED]. *Id.*

We find the agency’s evaluation in this regard reasonable. The protester’s FPR explained that it included a “description of all management support tools (access to both Zin [Technologies] and [the agency]” in a chart that identified [DELETED] different tools. However, the proposal then specifically identified [DELETED] of the [DELETED] management support tools to which the agency would have access, but did not clarify the level of access the agency would have for the other [DELETED] tools. As noted above, the agency found it unrealistic that it would have access to all [DELETED] tools, including tools that were specific to [DELETED] and [DELETED], among other things. Based on the language in the FPR, we find that the agency reasonably concluded that these statements lacked clarity as to what management tools the agency would be able to access. Further, even after the agency raised concerns in discussions regarding references to other parts of the protester’s proposal to describe the protester’s proposed management system tools, the protester’s FPR continued to reference other parts of its proposal. Accordingly, we find the agency’s assessment of a weakness to the protester’s management plan in this regard reasonable.

#### Discussions Under the Mission Suitability Factor

Zin Technologies contends that NASA conducted discussions pertaining to the mission suitability factor that were not meaningful, misleading, and otherwise unequal to the discussions conducted with Sierra Lobo. Comments & Supp. Protest at 20-26. In this regard, the protester argues that the agency failed to sufficiently identify its concerns

with the protester's initial proposal, resulting in discussions that were not meaningful and misleading. *Id.* at 23. The protester also argues that discussions were unequal because the "record indicates that Sierra Lobo received significantly more information" regarding its proposal than Zin Technologies did, and that the awardee was able to eliminate nearly all of its weaknesses after discussions, while the protester was able to eliminate only one weakness. *Id.* at 26. Accordingly, the protester argues "the available record indicates [the protester's] discussions were objectively less substantial than Sierra Lobo's, and the changes to its proposal did not result in substantially increased ratings." *Id.*

NASA responds that its discussions with Zin Technologies under the mission suitability factor were meaningful, equal to those held with Sierra Lobo, and consistent with FAR section 15.306. MOL at 22; Supp. MOL at 18-19. The agency contends that both offerors were sent discussions notification letters that identified, among other things, every weakness and significant weakness assigned by the SEB, and that it held in-person meetings with each offeror. MOL at 22-23. The agency further maintains that the protester's focus on the amount of information received by each offeror is misplaced, because discussions should be tailored to each offeror's proposal, and thus the amount of information provided by the agency would vary with proposals. Supp. MOL at 19.

Agencies have broad discretion to determine the content and extent of discussions, and we limit our review of the agency's judgment in this area to a determination of whether they are reasonable. *InfoPro, Inc.*, B-408642.2, B-408642.3, Dec. 23, 2014, 2015 CPD ¶ 59 at 9. 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 in a manner to materially enhance the offeror's potential for receiving the award. FAR 15.306(d). The degree of specificity required in conducting discussions is not constant and is primarily a matter for the procuring agency to determine. *Synergy Sols., Inc.*, B-413974.3, June 15, 2017, 2017 CPD ¶ 332 at 10.

Additionally, offerors must be afforded equal opportunities to address the portions of their proposals that require revision, explanation, or amplification. *Unisys Corp.*, B-406326 *et al.*, Apr. 18, 2012, 2012 CPD ¶ 153 at 7. However, the requirement for equal treatment does not mean that discussions with offerors must, or should, be identical. To the contrary, discussions must be tailored to each offeror's proposal. FAR 15.306(d)(1); (e)(1); *Metropolitan Interpreters & Translators, Inc.*, B-403912.4 *et al.*, May 31, 2011, 2012 CPD ¶ 130 at 7.

Here, we find NASA's conduct of discussions with respect to the mission suitability factor was reasonable and that discussions with the protester were meaningful and not misleading. As previously explained, the agency provided Sierra Lobo and Zin Technologies each with a detailed, point-by-point document that enabled the offerors to meaningfully improve their proposals. As discussed above, we find the weaknesses assessed to the protester's proposal after submission of FPRs were primarily the result

of the protester failing to adequately respond to the discussions points identified by the agency, or otherwise introducing new information that was inaccurate or unsubstantiated--these weaknesses were not, as the protester contends, the result of discussions that were not meaningful.

For example, the agency's discussions stated that the protester's proposal indicated a lack of understanding of risk mitigation, in part because several of its risk mitigation strategies took credit for reducing both the likelihood and consequences of risk, where it appeared only of those components would be impacted by the proposed strategy. This reasonably alerted the protester that it needed to review and revise relevant portions of its risk mitigation analysis. The resulting weaknesses the agency assessed were not due to the protester being unaware as to what areas of its proposal needed revision or amplification, but rather, were due to the information the protester introduced into its FPR, which the agency reasonably found contained inaccuracies.

We similarly find that NASA's conduct of discussions did not favor one offeror over another. As an initial matter, we reject the protester's argument that simply because the awardee received an extra page of discussions points or more slides in a slide presentation, this meant that discussions were unequal. See Comments & Supp. Protest at 26. Similarly, we reject the argument that discussions were unequal solely because the awardee was able to improve its technical ratings more than the protester was able. See *id.* at 25-26. We agree with the agency's position that, according to the FAR, discussions should be tailored to each offeror's proposal. See FAR 15.306(d). The agency described in detail its process for conducting discussions, including giving both offerors a discussions letter and a 2-hour in-person briefing regarding the points raised. COS at 20. This process for conducting discussions was undertaken in an equal manner.

Further, the protester's argument that the awardee received more detail or greater instruction on how to improve its proposal is without merit and contradicted by the record. As an example, to support its argument, the protester cites the discussion point it received that "adding [DELETED]" was actually "[DELETED]." AR, Tab 9, Zin Technologies Discussions Letter at 3. The protester contends that this discussion point was unequal to those provided to the awardee, which "pointed Sierra Lobo directly to the figures and statements in its proposal which confused the agency." Supp. Comments at 11. However, the record demonstrates that after the protester submitted its FPR, the agency credited the protester for resolving this issue. This contradicts the protester's argument that discussions were unequal, and that the awardee received more detailed information, where the protester was able to sufficiently resolve a discussions issue that at the same time it claims was insufficiently meaningful and demonstrated unequal discussions. Based on our review of the discussions letters provided to Zin Technologies and Sierra Lobo and the agency's conduct of the discussions process overall, we find the agency treated offerors in an even-handed manner, and this protest ground is accordingly denied.

## Relevant Experience and Past Performance Factor

Zin Technologies raises various challenges to NASA's evaluation of proposals under the relevant experience and past performance factor. The protester argues that the contemporaneous record does not support the agency's evaluation conclusions, that the agency unreasonably evaluated multiple Sierra Lobo past performance examples, and that the agency engaged in disparate treatment in favor of the awardee.<sup>12</sup> Comments & Supp. Protest at 11-17. For example, the protester challenges the agency's identification of a sixth past performance example, not submitted by the awardee, and the agency's subsequent evaluation and documentation of that example. *Id.* at 13-15. The protester also alleges that the agency engaged in unequal discussions with respect to this factor.<sup>13</sup>

NASA argues that its evaluation under the relevant experience and past performance factor was consistent with the terms of the solicitation and adequately documented. Supp. MOL at 3. In this regard, the agency contends that the record demonstrates it considered all past performance information for each offeror, and adequately

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<sup>12</sup> In its initial protest, Zin Technologies argued that the agency unreasonably assigned its proposal a rating of moderate level of confidence under the relevant experience and past performance factor. Protest at 17-18. In its comments and supplemental protest, however, the protester failed to meaningfully respond to the agency's arguments addressing this issue in the memorandum of law. Instead, the protester generally makes the conclusory argument that the agency "attributed a flawed [m]oderate [c]onfidence [r]ating to [its] proposal," without further argument. Comments & Supp. Protest at 17. The protester instead raises a challenge concerning the adequacy of the agency's documentation of the evaluation under this factor. *Id.* at 11-12. Accordingly, we consider the first aspect of the protest ground abandoned and dismiss it. We address below the argument concerning the adequacy of the agency's documentation of its evaluation conclusions under this factor. See *Tele-Consultants, Inc.*, B-413117 *et al.*, Aug. 12, 2016, 2016 CPD ¶ 222 at 6 (dismissing protest ground as abandoned where protester failed to meaningfully respond to specific information provided by the agency and otherwise provided a near verbatim recitation of previous arguments).

<sup>13</sup> In its comments and supplemental protest, the protester sets forth two primary arguments to support its contention that the agency's discussions were unequal under this factor. First, the protester alleges that the agency failed to raise concerns in discussions that two of the protester's past performance examples were "'less' similar in complexity" but asked the awardee to explain the relevance of some of its past performance examples. Comments & Supp. Protest at 27. Second, the protester alleges that the agency "failed to document its evaluation for the [f]actor 3 discussions." *Id.* at 28. After the supplemental agency report was filed, the protester withdrew its first argument. Supp. Comments at 12. We find the protester's second argument does not concern the equality of discussions, but rather, is a general challenge to the agency's documentation of its evaluation of the awardee's past performance and we will treat it as such.

documented its conclusions. *Id.* at 4. Further, the agency maintains that its identification of additional past performance examples, for both the awardee and the protester, and its evaluation thereof, was reasonable and consistent with the terms of the solicitation. *Id.* at 8-13.

The evaluation of an offeror's past performance, including the agency's determination of the relevancy and scope of an offeror's performance history, is within the discretion of the contracting agency which we will not find improper unless the assessments are unreasonable or inconsistent with the solicitation's evaluation criteria. *Sterling Medical Assocs., Inc.*, B-418674, B-418674.2, July 23, 2020, 2020 CPD ¶ 255 at 8. When a protest 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. *INTELiTEAMS, Inc.*, B-418123.4, Dec. 9, 2020, 2020 CPD ¶ 397 at 6.

The RFP provided that for the relevant experience and past performance factor, offerors' proposals should contain three sections: (1) past performance narrative (PPN); (2) past performance questionnaires (PPQs); and (3) past performance databases (PPDs). RFP at 149-150. The offeror would provide the first two sections and the government would obtain the third section. *Id.* at 148-149. The solicitation instructed offerors to submit a minimum of three relevant contracts in terms of size, content, and complexity to the SOW. *Id.* at 148.

The PPN was required to contain contract information, an assessment of contract performance, and information regarding any terminations. *Id.* at 149-150. For PPQs, offerors were required to send questionnaires to points of contact for the respective contracts submitted in the PPN section, with instructions for the point of contact to complete and forward the completed PPQ to the contracting officer for this procurement. *Id.* at 150. Finally, for the PPD section, the agency advised that it would "collect and review additional relevant experience and past performance information from [g]overnment databases as well as other sources of information available." *Id.* The agency also required past performance information for any major subcontractors proposed. *Id.* at 148.

The RFP advised that NASA would evaluate the PPN, PPQs, and PPD information to determine a single level of confidence rating for offerors under this factor. *Id.* at 165. The RFP explained that the agency would evaluate the past performance information in a cumulative manner, and that a level of confidence rating would be consolidated as a single rating based on the quality of each instance of relevant past performance provided. *Id.* at 166. Considerations for determining relevancy included contract "scope/complexity, size, type, length, customer and role as prime or subcontractor." *Id.* at 165. The level of confidence ratings would be based on both relevancy and quality of performance. For example, to merit a rating of very high level of confidence, the submitted experience and performance had to demonstrate both "exceptional merit" and be "very highly pertinent to this acquisition." *Id.* at 167. To merit a rating of moderate

confidence, the submitted experience had to demonstrate “effective performance” and be “pertinent to this acquisition.” *Id.*

Zin Technologies detailed four prior contracts in its PPN, including its work under the predecessor contract, SpaceDOC II. AR, Tab 29, Relevant Experience and Past Performance (RE&PP) Memo at 22. As part of the PPD, NASA independently identified a fifth contract in the contractor performance assessment reporting system (CPARS) database, the research, engineering, and mission integration services (REMIS) contract for which the protester served as the prime contractor. *Id.* The contemporaneous record demonstrates that the agency made a relevancy determination for each contract, including a discussion of role, size, contract type, length, and scope/complexity, and then considered for each relevant contract the submitted PPNs and PPQs, as well as any available CPARS information. See *id.* at 22-36. For the contracts submitted by the protester, the agency could locate a CPARS only for the SpaceDOC II contract. *Id.* at 34. For the REMIS contract independently identified by NASA, the agency considered only the CPARS information, because the protester did not submit this contract in its PPN, and therefore did not provide a PPQ to a relevant point of contact to complete and return to NASA.

The record demonstrates that the NASA SEB determined the relevancy of Zin Technologies’ past performance examples to be “very highly pertinent” to the acquisition.<sup>14</sup> AR, Tab 30, Addendum to RE&PP Memo at 5. With regard to performance, the SEB considered information provided in PPNs, but also considered the numbers of each type of rating the protester received across all evaluated contracts for both PPQs and PPDs.<sup>15</sup> AR, Tab 29, RE&PP Memo at 33-35. In addition, the record demonstrates the agency considered comments provided by the third-party evaluators (PPQ or CPARS). *Id.* For example, the agency noted “generally positive” comments across PPQs, specifically with respect to one “complex development effort.” *Id.* at 33. The agency also noted “generally good” inventory control and record keeping. *Id.* Based on this information, along with its determination of very highly pertinent relevancy, the SEB concluded that the protester’s proposal merited a rating of moderate level of confidence.<sup>16</sup> *Id.* at 35.

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<sup>14</sup> Though the SEB initially found the protester’s examples “highly pertinent,” after discussions, the agency concluded the protester’s examples were “very highly pertinent.” AR, Tab 30, Addendum to RE&PP Memo at 5.

<sup>15</sup> The PPQ and PPD contained reviews of the offeror’s performance on prior contracts in which the offeror was assigned one of the following ratings for each of multiple different areas of work: exceptional, very good, satisfactory, marginal, unsatisfactory, or neutral. AR, Tab 29, RE&PP Memo at 33-35. The agency considered how many of each rating the offeror received across each past performance example. *Id.*

<sup>16</sup> In discussions, the protester was given the opportunity to address some adverse past performance information discovered by the agency, to which the protester had not yet had a chance to respond. AR, Tab 17, SEB Briefing to SSA at 116-117. The protester  
(continued...)

In the NASA SEB briefing to the SSA, the SEB provided the consolidated PPQ and PPD ratings. AR, Tab 17, SEB Briefing to SSA at 112-115. The SEB also provided a discussion of the protester's satisfactory and marginal ratings, but not any other ratings, as documented in the CPARS reports and PPQs. *Id.* at 179-184, 187. The contracting officer's statement explains this was done to "facilitate an efficient presentation of discriminating information to the SSA," because ratings of satisfactory especially can sometimes be ambiguous. Supp. COS at 1. The SSA independently reviewed and concurred with the SEB's findings and conclusion that the protester's proposal merited a moderate level of confidence under this factor, noting the protester's "mostly [s]atisfactory and [v]ery [g]ood ratings as well as a small percentage of [e]xceptional and a smaller percentage of [m]arginal ratings." AR, Tab 18, Source Selection Statement at 11.

As to Sierra Lobo, the awardee identified five projects in its PPN, including three by Sierra Lobo and two by the awardee's major subcontractor, Leidos, Inc. AR, Tab 29, RE&PP Memo at 6. NASA independently identified a sixth contract through its review of the government CPARS database, the Test, Evaluation, and Support Team 3 (TEST3) contract under which Sierra Lobo performed as the prime contractor. *Id.* at 6-7. As with the evaluation of Zin Technologies, the record demonstrates the agency made a relevancy determination for each contract, and then considered performance ratings and information from the PPQs and PPDs, in addition to the PPN. *Id.* at 10-21. The SEB concluded that the awardee's proposal merited a rating of high level of confidence. *Id.* at 21.

For the awardee's TEST3 contract, the agency considered only the CPARS information, because the awardee did not include this contract in its PPN, and thus also never requested a PPQ from a relevant third-party point of contract. *Id.* at 19. The record also indicates that for the Omnibus Multidiscipline Engineering Services (OMES) contract, included in its PPN and under which the awardee performed as a major subcontractor, the awardee requested a PPQ, but the PPQ was never submitted by the indicated point of contact. The agency also was not able to locate a CPARS report for the OMES contract, and accordingly no PPD information was evaluated for this contract. See *id.* at 19; AR, Tab 17, SEB Briefing to SSA at 109; Supp. COS at 7.

For the TEST3 contract, the NASA SEB documented its relevancy determination using the criteria in the RFP: role, size, type, length, customer, and scope/complexity. AR, Tab 29, RE&PP at 14-15. Notable among the agency's findings was that the contract was recently performed by the awardee as the prime contractor, it involved another NASA center customer (the Johnson Space Center) and the contract involved support work related to the work to be performed under SpaceDOC III. *Id.* The agency suggested that the TEST3 contract had a similar, if not higher, level of complexity to that of SpaceDOC III, and overall, the SEB concluded this contract to be relevant. *Id.*

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submitted its responses, however, the agency determined that the responses did not warrant a change in the protester's past performance rating. *Id.* at 117.



During discussions, NASA asked the awardee to “elaborate on the proposed role” of its major subcontractor, Leidos. AR, Tab 31, Sierra Lobo Discussions Letter at 7. The agency explained that without clearly identifying the specific roles Leidos would perform on the current contract, “it was difficult for the [g]overnment to determine whether the relevant examples provided were representative of the actual work they would perform.” *Id.*

After Sierra Lobo submitted its FPR, NASA evaluated the FPR and documented its findings about Sierra Lobo’s updated proposal. The agency noted, among other findings, Sierra Lobo proposed Leidos to perform a role as [DELETED], and a role to provide “[DELETED]” with respect to certain areas of the SOW. AR, Tab 30, Addendum to RE&PP Memo at 1. The SEB concluded that based on this new information, “the previously reported past performance [for Leidos] aligned with the roles [Sierra Lobo] proposed Leidos to complete,” and therefore the past performance was “very highly pertinent to the work they would perform” under this contract. *Id.* at 2. Given the updated information, and Leidos’s strong past performance record, the SEB “determined that [Sierra Lobo]’s past performance merited an increase in the confidence level rating.” *Id.*

Zin Technologies argues that the agency’s evaluation of Sierra Lobo’s relevant experience and past performance was flawed in multiple respects. For example, the protester contends that the agency failed to document its evaluation of the awardee’s FPR submitted after discussions. Comments & Supp. Protest at 27-28. Zin Technologies also alleges the agency’s relevancy determination of the awardee’s TEST3 contract was flawed and undocumented, that the agency identified the TEST3 contract “on its own accord,” which apparently “boost[ed]” the rating the awardee received, and that the agency disparately treated offerors because it did not consider a PPQ or PPD information for the awardee’s OMES contract, while the protester provided a PPQ for each of the four contracts it identified in its proposal.<sup>17</sup> *Id.* at 13-16; Supp. Comments at 6.

We find NASA’s evaluation of proposals under the relevant experience and past performance factor reasonable, consistent with the solicitation, and adequately documented. In this regard, we first find reasonable NASA’s documentation of the rationale for the increase to Sierra Lobo’s FPR rating under the relevant experience and past performance factor. As previously explained, during discussions the agency asked the awardee to elaborate on the proposed role of its subcontractor, Leidos. In

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<sup>17</sup> In its comments and supplemental protest, the protester also alleged that the “record provides no documentation to support the [a]gency’s evaluation rationale,” and that the agency unreasonably documented only the protester’s ratings of satisfactory and marginal, but not the ratings of very good or neutral, or the accompanying comments. Comments & Supp. Protest at 11-12. After the agency addressed these arguments in the supplemental agency report, the protester failed to meaningfully respond to them. Accordingly, we consider this protest ground abandoned. See *Tele-Consultants, Inc., supra*.

evaluating the awardee's FPR, and as documented in the addendum to the RE&PP, the agency found that the awardee's explanation of Leidos's proposed role, coupled with Leidos's strong past performance ratings, merited an increase in level of confidence rating. See AR, Tab 30, Addendum to RE&PP Memo at 1. We find the agency's conclusion in this regard reasonable, and the documentation adequate to explain the agency's conclusions.<sup>18</sup>

We also find Zin Technologies' arguments pertaining to Sierra Lobo's TEST3 contract to be without merit. The protester's main argument that "the record continues to lack any supporting documentation of the [a]gency's determination as to [the] relevance of the TEST3" ignores the contemporaneous explanation of the agency's relevancy determination for this contract. Supp. Comments at 5. As explained above, the agency determined among other things that this contract was recently performed, involved another NASA center customer, involved support work related to that contemplated for SpaceDOC III, and that the awardee served as the prime contractor. AR, Tab 29, RE&PP at 14-15. Given the detailed description in the RE&PP memorandum and the protester's failure to challenge the substance of the agency's findings, we find the agency's documentation of the relevance of this example reasonable.

We find Zin Technologies' other challenges concerning the TEST3 contract are also without merit. The protester alleges that the agency "on its own accord added the \$400 [million] TEST3 contract for evaluation, apparently boosting Sierra Lobo's [c]onfidence [r]ating." Comments & Supp. Protest at 15. This argument suggests that the agency's identification and evaluation of the TEST3 contract was what led to the agency increasing the awardee's level of confidence rating post-discussions, however, this argument is not supported by the record. As an initial matter, the RFP permitted the agency to "collect and review additional relevant experience and past performance information from [g]overnment databases as well as other sources of information[.]" so any suggestion that it was improper for the agency to consider additional contracts not included in an offeror's proposal is meritless. RFP at 150. Moreover, as explained above, the change in the awardee's rating under this factor was the result of its clarification of its subcontractor's role, as documented in the addendum to the RE&PP memorandum and the SEB briefing to the SSA. See AR, Tab 17, SEB Briefing to SSA at 105. Furthermore, the record demonstrates that the agency's consideration of the TEST3 contract occurred before discussions were held; therefore, the agency's consideration of this contract had nothing to do with the post-discussions increase in the awardee's rating under this factor. See *id.*

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<sup>18</sup> The protester asserts that the awardee's proposal never actually addressed the agency's questions about Leidos' role as Sierra Lobo's subcontractor, citing AR, Tab 26. However, AR, Tab 26 refers to the awardee's initial proposal, not its FPR, and therefore this tab would not contain any information regarding these issues as they were addressed in the FPR, after the agency had raised its concerns during discussions. AR, Tab 26, Sierra Lobo Past Performance Proposal (dated May 3, 2023, the due date for receipt of initial proposals).

Zin Technologies also argues that the awardee's proposal was "patently deficient because it failed to comply with a material requirement of the [s]olicitation," where it did not provide a PPQ for the OMES contract. Comments & Supp. Protest at 16. The protester alleges the agency also engaged in disparate treatment because it did not consider PPQ or PPD information for the OMES contract but did consider a PPQ for all the contracts that Zin Technologies identified in its proposal. *Id.* The agency responds that the awardee's proposal was not deficient because the solicitation required offerors to send a PPQ to a third-party point of contact, and it was that party's responsibility to submit the completed PPQ to NASA. The awardee indicated in its proposal that it requested a PPQ for the OMES contract; however, no PPQ was returned to the agency. AR, Tab 26, Sierra Lobo Relevant Experience and Past Performance Volume at 39; AR, Tab 17, SEB Briefing to SSA at 108-109.

We agree with the agency that the awardee's past performance volume was not deficient, nor did it otherwise merit an adverse rating, merely because a third party failed to timely return a PPQ for one of the contracts identified in the awardee's PPN. Here, the awardee complied with the solicitation requirement to request a PPQ from the third-party point of contact for this contract. Moreover, consistent with the terms of the solicitation and the agency's stated intent to evaluate past performance in a "cumulative manner" considering the PPN, PPQs, and PPD information across all of the submitted examples, the agency was still able to adequately evaluate the awardee's overall past performance, even without a PPQ or PPD information for this particular contract. Therefore, the protester's argument that the agency's evaluation of proposals under the relevant experience and past performance factor was unreasonable is denied.

Furthermore, the agency notes that the protester did not submit a PPQ for the REMIS contract, because it did not identify this contract in its PPN, and the contract instead was identified by the agency from its search of government databases. The agency also states that it did not consider PPD information for all the contracts identified by the protester in its PPN. See AR, Tab 29, RE&PP Memo at 34. The agency asserts that the protester therefore was not prejudiced in this regard, where the agency also evaluated one of the protester's past performance examples without a PPQ and other examples without reviewing PPD information. The protester did not meaningfully respond to this position raised by the agency. Based on our review of the record, we find the agency's evaluation of the TEST3 contract reasonable.

#### Best-Value Determination

Zin Technologies argues that NASA's best-value tradeoff decision "cannot be rational," because of the numerous flaws the protester identified in its protest grounds, and that but for these errors, Zin Technologies would have received higher adjectival ratings and "a recognition that its proposal was superior on all non-price factors." Protest at 21; Comments & Supp. Protest at 19. The protester also alleges that the agency's best-value decision was based on an inadequately documented record. Comments & Supp. Protest at 20.

NASA argues that its best-value decision was reasonable and adequately documented and that the protester raises a “derivative” challenge, since it is based only on the alleged defects in the underlying evaluation. MOL at 21. Accordingly, the agency argues that this challenge should be dismissed, because the agency’s underlying evaluation was reasonable and consistent with the terms of the solicitation.

Because we have denied the protester’s challenges to the agency’s evaluation and have found that the agency adequately documented its evaluations, we find the protester’s derivative challenge to the agency’s best-value decision also to be without merit. *U.S. Facilities, Inc.*, B-418229, B-418229.2, Jan. 30, 2020, 2020 CPD ¶ 65 at 8. Accordingly, this protest ground is denied.

### Organizational Conflict of Interest

Zin Technologies argues that NASA failed to identify and mitigate organizational conflicts of interest (OCIs) involving Sierra Lobo’s major subcontractor, Leidos.<sup>19</sup> In this regard, the protester alleges, “[t]here is a significant potential for biased ground rules from [Leidos’s] role in definition. There is a significant potential [for] impaired objectivity OCI in [Leidos’s] role in testing and verification. And there is a significant potential unequal access to information OCI in the information which Leidos can access under SpaceDOC III which may be useful to its future [] work.” Comments & Supp. Protest at 19.

NASA contends that the protester’s allegations of an OCI fail to meet the standard required by our Office and should accordingly be dismissed or denied. Supp. MOL at 16. In this regard, the agency maintains that the protester’s assertions are conclusory and lack the “hard facts” required to prevail on such a challenge. *Id.* In any event, the agency maintains that the contracting officer performed a reasonable investigation into the allegations and concluded there was no OCI that would preclude award of the contract to Sierra Lobo. Supp. COS at 10.

The FAR requires contracting officials to avoid, neutralize, or mitigate potential significant conflicts of interest to prevent an unfair competitive advantage or the existence of conflicting roles that might impair a contractor’s objectivity. FAR 9.504(a), 9.505. The situations in which OCIs arise, as described in FAR subpart 9.5 and the decisions of our Office, can be categorized into three groups: (1) biased ground rules; (2) unequal access to information; and (3) impaired objectivity. A biased ground rules OCI exists where a firm, as part of its performance of a government contract, has in some sense set the ground rules for another government contract by, for example, writing the statement of work or the specifications. FAR 9.505-1, 9.505-2; *Systems*

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<sup>19</sup> The protester alleged in its initial protest that the agency failed to mitigate an OCI due to Sierra Lobo’s work under the Test Facilities Operations Maintenance and Engineering (TFOME) II contract. Protest at 19. In its comments and supplemental protest, the protester withdrew this protest ground, and alleged the new organizational conflict of interested discussed herein. Comments & Supp. Protest at 17 n.4.

*Made Simple, Inc.*, B-412948.2, July 20, 2016, 2016 CPD ¶ 207 at 6. The primary concern in such cases is that the firm could skew the competition, whether intentionally or not, in favor of itself. An unequal access to information OCI exists where a firm has access to nonpublic information as part of its performance of a government contract, and where that information may provide the firm an unfair competitive advantage in a later competition for a government contract. FAR 9.505(b), 9.505-4; *Cyberdata Techs., Inc.*, B-411070 *et al.*, May 1, 2015, 2015 CPD ¶ 150 at 6. 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(a); *Diversified Collection Servs., Inc.*, B-406958.3, B-406958.4, Jan. 8, 2013, 2013 CPD ¶ 23 at 5-6.

The identification of conflicts of interest is a fact-specific inquiry that requires the exercise of considerable discretion. *Guident Techs., Inc.*, B-405112.3, June 4, 2012, 2012 CPD ¶ 166 at 7. A protester must identify hard facts that indicate the existence or potential existence of a conflict; mere inference or suspicion of an actual conflict is not enough. We review OCI investigations for reasonableness, and where an agency has given meaningful consideration to whether a significant conflict of interest exists, we will not substitute our judgment for the agency's absent clear evidence that the agency's conclusion is unreasonable. *TISTA Sci. & Tech. Corp., Inc.*, B-408175.4, Dec. 30, 2013, 2014 CPD ¶ 17 at 6.

Zin Technologies alleges potential conflicts of interest due to Leidos's work on the Orion Laser Air Monitor System (LAMS) contract.<sup>20</sup> The protester asserts that Leidos was responsible for developing the LAMS to be used on the Orion spacecraft, which is the spacecraft the agency will use for the Artemis mission to return astronauts to the moon. Comments & Supp. Protest at 18. The protester argues that the SpaceDOC III contract will involve, among other things, testing and verification of space flight systems, associated support systems and equipment, and related ground development activities. *Id.* at 17. As support for its argument, the protester contends that the SpaceDOC III statement of work included the potential for work on "[l]unar-based platforms," including activities that could include support for "Artemis operations to return astronauts to the Moon by 2024," and "Orion operations that will take astronauts to deep space." *Id.* at 18. Orders placed under the SpaceDOC III contract also have the potential to utilize the Glenn Research Center's Telescience Support Center. *Id.* The protester alleges that because Leidos develops the LAMS for Orion spacecraft, there is a potential for all three types of OCIs. *Id.* at 19.

In response to the protest, the contracting officer conducted an OCI investigation. AR, Tab 33, NASA OCI Investigation Memo at 1. The contracting officer's investigation included reviews of both the SpaceDOC III and LAMS contracts, as well as consultations with the SpaceDOC III contracting officer's representative, the SpaceDOC II contracting officer's representative, the SpaceDOC II and III alternate

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<sup>20</sup> The protest alleged that the holder of the LAMS contract was Dynetics, Inc., which was acquired by Leidos in 2020. The relationship between Dynetics and Leidos is not in dispute.

contracting officer's representative, the LAMS contracting officer, and the LAMS contracting officer's representative. *Id.* at 3. Overall, the contracting officer determined that no OCI existed that would preclude award of the SpaceDOC III contract to Sierra Lobo. *Id.* at 1.

The OCI investigation included various factual findings and responses to the protester's allegations. For example, the agency stated that the investigation revealed that the design, development, test, and evaluation (DDT&E) work for the LAMS contract was completed on a predecessor contract (other than LAMS), and even though there was some additional minor DDT&E work to be completed, all of that work would be done "within the scope of the LAMS contract," and not any other contract, such as SpaceDOC III. AR, Tab 33, NASA OCI Memo at 6. The agency also confirmed that the Defense Contract Management Agency performs the pre-delivery inspections of LAMS deliverables, and that post-delivery, the evaluation and testing activities of LAMS deliverables are performed under a support services contract vehicle other than SpaceDOC, and are also done under strict supervision of NASA personnel. *Id.* at 7.

Finally, the contracting officer explained there was "little to no likelihood" that performance under the SpaceDOC contract would have any bearing whatsoever on the LAMS contract, including with respect to use of Glenn Research Center's telescience support center, as there had been no previous orders under SpaceDOC II that directly supported either Artemis operations or Orion projects.<sup>21</sup> *Id.* at 7. In any event, because the SpaceDOC III contract is to be performed utilizing a specific ordering structure, the contracting officer noted that any later identified work that has the potential to present an OCI could be assessed and avoided by, for example, assigning the work to a different contractor other than Leidos for that particular order. *Id.* Ultimately, the contracting officer concluded "there is no impaired objectivity OCI with respect to the LAMS contract that would preclude award of SpaceDOC III to [Sierra Lobo]." *Id.*

In response to NASA's investigation and conclusions, Zin Technologies contends that the agency failed to properly evaluate the awardee's unmitigable OCIs. Zin Technologies contends that there is a biased ground rules OCI because of the additional DDT&E work required by the LAMS contract. Supp. Comments at 7. The protester also asserts that Leidos has an unequal access to information OCI because it will "have substantial access to information that no other LAMS competitor will have." *Id.* at 9. Zin Technologies also maintains that the agency's conclusion that there is no impaired objectivity OCI was "wholly unreasonable." *Id.*

Based on our review of the record, we find Zin Technologies has not sufficiently alleged hard facts to support its argument of any potential OCIs. To support its biased ground

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<sup>21</sup> The agency explained that the Glenn Research Center telescience support center is a "secure, multipurpose facility designed to provide dedicated support for simultaneous training, simulations, and real-time operations of space experiences on-board the [international space station], in support of Artemis operations." AR, Tab 33, NASA OCI Memo at 7.

rules challenge, the protester argues in part that “there is no doubt Sierra Lobo’s team (which includes Leidos) will be in a position to influence future LAMS requirements” but does not explain or identify what work under the SpaceDOC III contract could put Leidos in such a position to influence a future LAMS requirement. Supp. Comments at 8. To the extent that Zin Technologies argues that any remaining LAMS DDT&E work could lead to a biased ground rules OCI on a future LAMS procurement, the agency stated that this work is being done on the existing LAMS contract, not the SpaceDOC III contract, and it is therefore not plausible that the SpaceDOC III contractor would have an OCI with respect to this work.

In this regard, if the DDT&E work is being performed under the LAMS contract, then it follows that the SpaceDOC III contractor would not be performing any work that might influence any future LAMS procurement. Furthermore, it is unclear how Leidos’ alleged potential to influence future LAMS requirements as part of its work on either the LAMS or SpaceDOC III contracts created a biased ground rules OCI with respect to the current procurement since Zin Technologies does not allege that Leidos somehow set the ground rules or influenced the current SpaceDOC III procurement. The protester therefore has not set forth any hard facts as to how work under the SpaceDOC III contract could lead to a biased ground rules OCI.

Similarly, in support of its unequal access to information challenge, the protester argues that “Leidos will not only be in a position to influence future LAMS requirements, but it will also have substantial access to information that no other LAMS competitor will have.” Supp. Comments at 9. Zin Technologies does not identify or even suggest what, if any, information Leidos would have access to under the SpaceDOC III contract that would give rise to an unequal access to information OCI. In addition, even if it did have access to certain information that would allegedly be beneficial in competing for a future LAMS contract, it is again unclear how that would create an OCI with respect to the SpaceDOC III contract as opposed to some potential future LAMS contract that is not the subject of this procurement. Accordingly, we find that the protester has not provided any hard facts to establish an unequal access to information OCI.

Finally, the protester has not provided any hard facts that would lead us to conclude there is an impaired objectivity OCI. In response to the agency’s investigation, the protester has not identified which work in the SpaceDOC III contract would put Leidos in a position to evaluate its own performance under the LAMS contract. Notably, the protester has not refuted the agency’s statements that additional DDT&E work for the LAMS contract would be completed within the scope of that contract, or that inspections, evaluations, and testing of the LAMS deliverables are done by another agency or under a different contract vehicle other than SpaceDOC III. The protester’s vague and conclusory responses are insufficient to demonstrate that an impaired

objectivity OCI exists or has the potential to exist due to Leidos's work on the LAMS contract.<sup>22</sup>

Accordingly, we find that the protester's allegation amounts to no more than inference or suspicion of an impaired objectivity OCI, and lacks the hard facts required to demonstrate the existence or potential existence of an OCI; this protest ground is therefore denied.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel

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<sup>22</sup> The RFP required offerors to submit OCI plans with their proposals. RFP 120-23. The protester contends that the awardee already identified a potential impaired objectivity in its OCI plan and proposed to mitigate it using non-conflicted subcontractors, but the agency never considered that as part of its OCI investigation. Supp. Comments at 9. However, based on our review of the record, the only potential impaired objectivity OCI recognized by the awardee was Leidos's work on a different contract, not the LAMS contract. AR, Tab 36, Sierra Lobo OCI Plan at 43. Accordingly, this potential OCI and proposed mitigation was not relevant to the protester's allegations regarding the LAMS contract, which is the only contract that the protester asserted gave rise to an OCI.