U.S. GOVERNMENT ACCOUNTABILITY OFFICE
441 G St. N.W.
Washington, DC 20548

Comptroller General
of the United States

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

# Decision

**Matter of:** Kūpono Government Services, LLC

**File:** B-421392.13; B-421392.14

**Date:** October 9, 2024

Robert K. Tompkins, Esq., Gordon N. Griffin, Esq., Hillary J. Freund, Esq., Kelsey M. Hayes, Esq., Richard J. Ariel, Esq., and Tanner N. Slaughter, Esq., Holland & Knight LLP, for the protester.
James Y. Boland, Esq., Caleb E. McCallum, Esq., Kelly M. Boppe, Esq., and David L.W. Smith, Esq., Venable LLP, for Eagle Harbor, LLC, the intervenor.
Kevin R. Hilferty, Esq., Greta P. Wright, Esq., James J. Jurich, Esq., and John L. Bowles, Esq., Department of Energy, for the agency.
Todd C. Culliton, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

**DIGEST**

Protest that the agency unreasonably evaluated technical and cost proposals is denied where the record shows that the evaluation was reasonable and consistent with the terms of the solicitation.

**DECISION**

Kūpono Government Services, LLC, of Orlando, Florida, the incumbent contractor, protests the award of a contract to Eagle Harbor, LLC, of Manassas, Virginia, under request for proposals (RFP) No. 89303020REA000003, issued by the Department of Energy (DOE) for management and operations support services for the agency's National Training Center (NTC). Kūpono argues that the DOE unreasonably evaluated proposals and improperly conducted the tradeoff analysis.

We deny the protest.

BACKGROUND

The NTC consists of three training facilities: the Main Campus, the Live Fire Range, and the Integrated Safety and Security Training Evaluation Complex. Agency Report

(AR), Tab A.1, RFP, attach. A, Performance Work Statement (PWS) at 245.[1] All three facilities are located within or in the area surrounding Albuquerque, New Mexico. *Id.* The NTC curriculum supports DOE and federal contractor personnel by providing training development, delivery, and support in a variety of DOE mission areas. PWS at 245. The NTC provides safeguards and security training programs, which include instruction regarding vulnerability assessments, nuclear materials control and accountability, physical security systems, personnel security, information security, and security program operations. *Id.* The NTC also provides a protective force training program, which includes basic and advanced firearms training, and provides nuclear safety training. *Id.* In addition, the NTC develops training programs to serve other DOE personnel, such as training in federal acquisitions and procurement. *Id.*

On September 15, 2020, DOE issued the RFP to procure management and operation support services for the NTC. RFP at 1. The competition was restricted to eligible 8(a)[2] small businesses. *Id.* The contractor would be required to develop and provide safety and security training, manage training programs, provide cyber-security and information technology support at the NTC, as well as maintain the NTC facilities and surrounding grounds. *Id.* The RFP contemplated the award of an indefinite-delivery, indefinite-quantity contract under which a variety of task orders would be issued. *Id.*

The competition would be conducted pursuant to the acquisition procedures set forth in FAR part 15, Contracting by Negotiation. RFP at 107. Award would be made on a best-value tradeoff basis considering technical approach, staffing plan, business management approach, past performance, and cost/price factors. *Id.* at 107-110. The technical approach factor was significantly more important than all other technical factors combined, the staffing plan factor and the business management approach factors were equivalent, and the past performance factor was the least important. *Id.* at 111. The technical factors, when combined, were more important than evaluated prices. *Id.*

Prior to the November 16, 2020, close of the solicitation period, eight offerors, including Kūpono and Eagle Harbor, submitted proposals. AR, Tab C.6, Source Selection Decision Document (SSDD) at 6. On March 1, 2022, the agency established a competitive range consisting of Kūpono, Eagle Harbor, and two other offerors. *Id.* at 7-8. After conducting discussions and receiving revised proposals, the agency selected Eagle Harbor for award on December 21, 2022. *Id.* at 8.

---

[1] Where available, GAO uses the page numbers assigned by the agency.

[2] Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a), authorizes the Small Business Administration (SBA) to enter into contracts with government agencies and to arrange for performance of those contracts through subcontracts with socially and economically disadvantaged small business concerns. Federal Acquisition Regulation (FAR) 19.800. This program is commonly referred to as the 8(a) program.

Shortly thereafter, Kūpono filed a protest with our Office challenging the award. AR, Tab C.6, SSDD at 9. Kūpono argued that the agency unreasonably evaluated technical and cost proposals, unequally conducted discussions, and improperly made the selection decision. *Kūpono Gov't Servs., LLC*, B-421392, Feb. 23, 2023 (unpublished decision) at 1. Prior to submitting its report, DOE notified our Office that it intended to take corrective action by requesting and evaluating revised cost proposals, and that it would then make a new award decision. *Id.* DOE also explained that it did not anticipate soliciting revisions to any other aspects of offerors' proposals. *See* COS/MOL at 6; *see also* Notice of Corrective Action, Feb. 15, 2023 at 1; DOE Resp. to Kūpono's Objection to Corrective Action, Feb. 21, 2023 at 2 ("At this time, DOE has not identified any errors which would require the submission of revisions to other sections of the proposals.").

Kūpono objected to the proposed corrective action, arguing that the proposed corrective action did not address its allegations and that the agency should also allow offerors to submit revised technical proposals. *Kūpono Gov't Servs., LLC*, *supra* at 1. Despite the objection, we dismissed the protest because the agency's decision to evaluate revised cost proposals and conduct a new award determination rendered academic the challenges to the original evaluation and tradeoff analysis. *Id.* at 1-2.

Kūpono then filed another protest challenging the scope of the corrective action. *Kūpono Gov't Servs., LLC; Akima Sys. Eng'g, LLC*, B-421392.9 *et al.*, June 5, 2023, 2023 CPD ¶ 136. Kūpono argued that its technical and cost proposals were inextricably intertwined and, therefore, the agency should have allowed offerors to submit revised technical proposals as part of the corrective action. *Id.* at 3. We sustained the protest because the record did not identify the concerns that prompted the agency to take corrective action, and we were unable to determine whether the proposed corrective action was appropriate to remedy any defects in the acquisition process. *Id.* at 3-6. We also explained that the protester reasonably demonstrated that any changes to the firm's cost proposal would impact the firm's proposed approach to recruiting, obtaining, and retaining personnel; thus, without any countering explanation from the agency, we agreed that the agency should solicit revisions to portions of offerors' technical proposals that are materially impacted by revisions to their cost proposals. *Id.* at 4-6.

On July 24, 2023, DOE notified offerors that they could submit revised cost proposals and revise portions of their technical proposals as appropriate. AR, Tab C.6, SSDD at 9. The agency also permitted offerors to revise their past performance proposals as necessary to reflect any changes that may have occurred since proposals were last submitted. *Id.* All four offerors in the competitive range, including Kūpono and Eagle Harbor, submitted revised proposals; Kūpono submitted revisions to both its cost and technical proposals, while Eagle Harbor only submitted revisions to its cost proposal. *Id.* DOE evaluated the revised proposals, with the following relevant results:

| | Eagle Harbor | Kūpono |
|---|---|---|
| **Technical Approach** | Outstanding | Outstanding |
| **Staffing Plan** | Outstanding | Outstanding |
| **Business Management Approach** | Good | Satisfactory |
| **Past Performance** | Favorable | Favorable |
| **Proposed Price** | $318,949,039 | $360,649,953 |
| **Evaluated Price** | $345,220,181 | $360,667,150 |

AR, Tab C.6, SSDD at 10. The source selection official (SSO) directly compared each offeror's proposal and determined that Eagle Harbor's proposal represented the best value. *Id.* at 36. The SSO noted that Eagle Harbor demonstrated the best technical proposal and business management approach, as well as a staffing plan equal to Kūpono's staffing plan and superior to the remaining offerors' plans. *Id.* The SSO also noted that Eagle Harbor demonstrated favorable past performance. *Id.* at 37. Finally, the SSO noted that Kūpono's evaluated price was the highest of all offerors and did not demonstrate any technical advantages that would warrant paying the significant price premium. *Id.* at 36-37. After learning that its proposal was unsuccessful, Kūpono filed the instant protest.

DISCUSSION

Kūpono raises numerous allegations challenging the agency's evaluation of proposals and tradeoff analysis. We have considered all the allegations and find no basis to object to the agency's conduct of the acquisition for any of the reasons advanced by the protester. We discuss the protester's principal contentions below. We note, at the outset that, in reviewing protests challenging an agency's evaluation of proposals, our Office does not reevaluate proposals or substitute our judgment for that of the agency; rather, we review the record to determine whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation criteria, as well as applicable statutes and regulations. *Nirvana Enter., Inc.*, B-414951.2, B-414951.3, Dec. 19, 2017, 2018 CPD ¶ 5 at 2-3.

Eagle Harbor's Technical Approach

Kūpono argues that the agency unreasonably assigned two strengths and failed to assign a weakness to Eagle Harbor's technical approach. *See* Comments at 24-30. First, Kūpono argues that the agency unreasonably assigned a strength based on Eagle Harbor's multimedia approach. Supp. Protest at 3-4. Second, Kūpono argues that DOE unreasonably assigned a strength based on Eagle Habor's approach to personal property management. *Id.* at 4-6. Third, Kūpono argues that the agency unreasonably removed a weakness associated with Eagle Harbor's approach to support desk services. Comments at 27-28.

The RFP instructed each offeror to discuss its proposed approach to accomplishing each task area identified in the PWS. AR, Tab A.2, RFP, amend. 1 at 8-9. Each offeror was required to demonstrate comprehension of each task area and capability to perform each task. *Id.* Offerors were also to describe their experience performing any proposed approach and to explain their management assurance system (MAS), which would monitor their performance and demonstrate appropriate risk mitigation strategies. *Id.* at 9. The agency would evaluate whether each offeror's technical capability, capacity, and approach would successfully fulfill the objectives of the PWS. RFP at 108. The agency would also consider the depth of the offeror's experience in using the proposed approaches and would evaluate each offeror's proposed MAS. *Id.*

The agency evaluated Eagle Harbor's technical approach as warranting an "outstanding" rating. AR, Tab C.2, Technical Evaluation Committee (TEC) Report at 133. DOE assigned two significant strengths, noting that Eagle Harbor demonstrated very beneficial approaches to protective force training, and training management and planning. *Id.* at 135-138. DOE also assigned 12 strengths, noting several beneficial features including that one of Eagle Harbor's subcontractors possessed significant capability and capacity with respect to multimedia technologies, and that Eagle Harbor demonstrated a thorough approach to property management. *Id.* at 142-143, 148-149. DOE assigned a single weakness associated with the firm's proposed MAS. *Id.* at 155-156. We discuss Kūpono's challenges to the specific assigned strengths in turn.

<u>Multimedia Approach</u>

The PWS requires that the selected contractor operate and manage the training systems and programs. PWS at 250. In so doing, the contractor is required to meet the following performance objective:

> Performance Objective 1.2.4 Multimedia: The Contractor shall provide eLearning and multimedia support (including advanced computer technologies development such as virtual reality) to NTC training programs, where appropriate, in accordance with approved operational plans and the expectations of DOE partners and other federal agencies.

*Id.* at 252.

When describing its approach, Eagle Harbor explained that its team (*i.e.*, the firm and its subcontractors) will maintain a robust eLearning program by developing a training program through its video studio, sound recording, and capability with other media formats. AR, Tab B.2.3, Eagle Harbor's Proposal, Volume II at 67. In this regard, Eagle Harbor explained that one of its subcontractors has a robust video studio encompassing 6,600 square feet with multiple soundstages and green screens. *Id.* at 57. The firm also explained that its subcontractor currently provides similar multimedia support for another contract and is exploring developing augmented reality training programs for nuclear security operations. *Id.*

DOE evaluated this aspect of Eagle Harbor's technical approach as a strength. AR, Tab C.2, TEC Report at 142-143. The agency explained that the video studio is larger and more advanced than NTC's multimedia facility, and that Eagle Harbor's subcontractor has significant knowledge of multimedia technology. *Id.* at 143. The agency also explained that the Eagle Harbor team is ahead of DOE regarding next-generation multimedia technologies. *Id.* As a result, DOE concluded that this aspect was beneficial because it would increase the probability of successful contract performance. *Id.*

Kūpono argues that this strength was unreasonably assigned because Eagle Harbor did not propose or intend to use its subcontractor for providing multimedia support. *See* Protester's Comments at 24-25; Supp. Protest at 4. In support of its contention, Kūpono points out that the SSO noted in the SSDD that Eagle Harbor did not specifically propose to use its subcontractor for multimedia support. Supp. Protest at 4. Kūpono also argues that the RFP limited DOE to assessing strengths based on experience to only those contracts referenced as part of the past performance proposal. *Id.* at 3-4. DOE responds that it reasonably assigned the strength, and that Kūpono misconstrues the record and the evaluation criteria. Consolidated Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 14. Specifically, DOE explains that it assigned the strength based not only on Eagle Harbor's experience in this area, but rather based on the total capabilities of Eagle Harbor's team. *Id.* at 18 ("Here, the TEC reasonably considered that [the subcontractor's] Global Virtual Training Lab and the knowledge gained therein, would be *available* to the NTC due to Eagle Harbor's "one badge" approach to its teaming partners, not that [the subcontractor] would be performing multimedia support.").

On this record, we have no basis to object to the assignment of this strength. First, we disagree with the protester's argument that the SSO recognized that Eagle Harbor would not use its subcontractor for providing multimedia support; instead, consistent with the agency's position, we note that Eagle Harbor's proposal explains that its team (which includes the relevant subcontractor) would be responsible for providing this support. AR, Tab B.2.3, Eagle Harbor's Proposal, Volume II at 67. Further, Eagle Harbor's organizational structure provides for a "One Team" approach that uses prime and subcontractor staff to support where necessary in order to perform the contract successfully. *See id.* at 107. While the SSO does state that Eagle Harbor did not specifically propose the subcontractor for multimedia support, reading the SSDD as a whole, it is clear the SSO envisioned that the subcontractor would be used, as part of Eagle Harbor's team to provide multimedia support to the NTC. AR, Tab C.6, SSDD at 15. Thus, we think the agency reasonably considered the capabilities of the subcontractor because Eagle Harbor's proposal represented them as being available for this contract. *See* COS/MOL at 22.

Second, we disagree that the RFP precluded the agency from assigning this strength because Eagle Harbor did not reference any past performance experience for the relevant subcontractor. The RFP's evaluation criteria provides that the agency could assign strengths based on an offeror's experience demonstrating a proposed approach or the general quality and attractiveness of an offeror's technical capability, capacity, and approach. RFP at 108; *see also* COS/MOL at 15 (explaining that "the evaluation of technical approach and corporate experience are different aspects of the technical evaluation"). Further, the evaluation record shows that the agency considered the subcontractor's facility (*i.e.*, video studio) and knowledge of current multimedia technology as beneficial, as opposed to their corporate experience. *See* AR, Tab C.2, TEC Report at 143. Thus, we do not object to the assignment of this strength because the record shows that the agency reasonably considered the subcontractor's capabilities as constituting favorable features of Eagle Harbor's proposal.

<u>Personal Property Management Approach</u>

The PWS requires that the contractor provide management functions that support the training programs. PWS at 255. As relevant here, the PWS requires the following:

> Performance Objective 1.4.5 Personal Property Management: The Contractor shall manage, account for and dispose of all Government property on the Contract's Government Property List per applicable Federal and DOE regulations and policies. All equipment, systems, databases, information, and materials acquired, developed or used by the Contractor under this contract are the property of the DOE.

*Id.* at 257. The PWS also requires the selected contractor to ensure accountability of high-risk items, such as small arms and munitions, property valued in excess of $2,000, and motorized vehicles. *Id.*

When describing its personal property management approach, Eagle Harbor explained that the approach encompasses employee training, internal controls for the Eagle Harbor team, a dedicated property manager, a robust property management plan, asset tracking systems, and other measures. AR, Tab B.2.3, Eagle Harbor, Volume II at 79-82. Regarding small arms and munitions, Eagle Harbor explained these materials would have special, additional controls, including a particular inventory method. *Id.* at 81. Eagle Harbor further explained that one of its subcontractors had successfully implemented this inventory method for another federal agency. *Id.* Eagle Harbor also explained that all Eagle Harbor and subcontractor personnel are responsible for reporting missing property and notifying the property manager. *Id.* at 82.

The agency evaluated Eagle Harbor's property management plan as a strength. AR, Tab C.2, TEC Report at 148. The agency identified several aspects of the plan as beneficial, including having an accountable corporate official, validation of the property management plan during contract transition, and a robust asset tracking program. *Id.* at 148-149. Additionally, the agency identified Eagle Harbor's approach to managing small arms and munitions as beneficial and noted that the firm's subcontractor has experience implementing the same approach for another federal agency. *Id.* at 149. The agency then identified other aspects of Eagle Harbor's small arms and munitions management plan that would be beneficial, including its plan to conduct cyclical inventories. *Id.* Based on all the features, the agency concluded that Eagle Harbor demonstrated a comprehensive and thorough approach to property management, which increased the likelihood of successful performance. *Id.*

Kūpono argues that the evaluation is unreasonable because Eagle Harbor did not propose to use the referenced subcontractor to conduct personal property management. Comments at 27. As support, Kūpono points out that Eagle Harbor's price proposal demonstrated that only Eagle Harbor's personnel would be used for this function. Supp. Protest at 5. DOE responds that the strength was not assigned based on the subcontractor's participation, but rather was for a comprehensive and thorough approach. COS/MOL at 23. Further, the agency explains that Eagle Harbor proposed to use the subcontractor to conduct small arms and munitions training, and that therefore the subcontractor's personnel would be responsible for maintaining the equipment. *Id.* at 25.

We do not object to the assignment of this strength. Contrary to Kūpono's position, we do not find that the strength was assigned solely based on the subcontractor's experience. Rather, as noted above, the agency identified several beneficial features, including the accountable corporate official, the validation process, and the asset tracking program. Further, while the agency referenced the subcontractor's experience when explaining the totality of the Eagle Harbor's management plan for small arms and munitions services, the agency did not isolate that feature as being particularly advantageous; instead, the agency identified Eagle Harbor's total approach, cyclical inventories, and coordination with government personnel as demonstrating the strength of this aspect of the firm's property management plan. Thus, we do not find this strength objectionable because the agency found Eagle Harbor's property management plan as overall demonstrating solid technical capability.

<u>Learning Nucleus Support Desk</u>

The PWS requires the contractor to provide support desk services for the agency's learning nucleus (*i.e.*, the DOE enterprise learning management system). PWS at 251, 259. The contractor must provide incident management for all learning management system information technology (IT) issues, phone support for all users, content request management for new or changed learning management system course material and reporting services to DOE. *Id.* at 259-260.

Eagle Harbor described its approach to providing the support desk function in its proposal. AR, Tab B.2.3, Eagle Harbor, Volume II at 84-85. Following discussions, Eagle Harbor added more material to its proposal, explaining the specific function of the learning nucleus support desk, the role of the contractor in providing tier I and tier II support, and stated that the firm will provide the requisite support and seek customer input for improving systems. *Id.* Eagle Harbor also delineated the multitude of functions that it will perform, such as troubleshooting issues, coordinating reporting of issues, and responding to trouble tickets. *Id.* at 85.

When evaluating Eagle Harbor's approach, the agency initially assigned a weakness because Eagle Harbor did not correctly identify the role of the contractor in providing support desk function; instead, Eagle Harbor referenced providing tier III support and maintaining the learning nucleus system, but those functions are provided under a separate federal contract. AR, Tab C.2, TEC Report at 158. The agency also noted that Eagle Harbor did not demonstrate corporate experience managing an enterprise-level help desk system. *Id.* at 159.

After raising the weakness during discussions with Eagle Harbor, and receiving Eagle Harbor's revised proposal, DOE removed the assigned weakness. DOE removed the weakness because Eagle Harbor correctly described its role as providing tier I and tier II helpdesk support and demonstrated a better understanding of the learning nucleus system. AR, Tab C.2, TEC Report at 159.

However, DOE also noted some areas of concern. The agency noted that Eagle Harbor mistakenly referred to the learning nucleus program as both a learning content management system and an enterprise learning management system. AR, Tab C.2, TEC Report at 159. The agency ultimately determined that this misunderstanding likely resulted from how the agency communicated this weakness to the firm during discussions. *Id.* ("The confusion most likely arose when the offeror read the weakness above and noted the TEC's citation of PWS Performance Objective 1.2.2 DOE Enterprise Learning Management System (LMS)/Learning Content Management System (LCMS)."). The agency also noted that Eagle Harbor still lacked corporate experience performing this function. *Id.* In total, the agency concluded that Eagle Harbor's better demonstrated understanding mitigated the risk of unsuccessful performance, but that the firm's lack of experience prevented the firm from demonstrating a strength in this area. *Id.*

Kūpono argues that the DOE unreasonably removed this weakness because the flaws identified in the firm's proposal show that the firm does not understand the requirement, and still lacks corporate experience performing this level of support. Supp. Protest at 15; Comments at 27-28. DOE responds that it reasonably removed the weakness because Eagle Harbor's initial proposal was only partially consistent with the performance objective, but that the firm resolved this issue in its revised proposal. COS/MOL at 25-28. The agency also explains that it reasonably considered Eagle Harbor's lack of experience as not demonstrating a weakness. *Id.*

We have no basis to object to the agency's evaluation. The record shows that the agency fully considered Eagle Harbor's proposed approach to providing helpdesk services. While the agency initially viewed Eagle Harbor's lack of understanding and corporate experience as indicators of a heightened risk of unsuccessful performance, the record shows that Eagle Harbor revised this part of its proposal, and added more details demonstrating its understanding of the helpdesk function and what services it would specifically provide. Although the firm was unable to remedy its lack of experience, the agency simply concluded that Eagle Harbor's overall approach, including the better demonstrated understanding of the function, mitigated the risk of poor performance and did not warrant the assignment of a weakness. While the protester may ultimately disagree with the agency's judgment, such disagreement does not provide a basis to find the agency's actions unreasonable. *Oshkosh Defense, LLC*, B-421506 *et al.*, June 12, 2023, 2023 CPD ¶ 141 at 22-23 (disagreement with an agency's evaluation judgments does not provide a valid basis of protest).

Staffing Plan

Kūpono argues that DOE unreasonably evaluated both its and Eagle Harbor's staffing plans. As to its own staffing plan, Kūpono argues that the agency should have assigned another strength for the firm's telework approach and emphasis on culture, connection, and morale. Comments at 22-23. As for Eagle Harbor's staffing plan, Kūpono argues that DOE unreasonably assigned an "outstanding" rating because Eagle Harbor's proposed general manager lacked recent experience. *Id.* at 21-22.

The RFP instructed each offeror to propose a staffing plan demonstrating that the offeror can provide an adequate workforce. RFP at 95-96. Each staffing plan should demonstrate that employees will have the appropriate skills and qualifications. *Id.* The RFP also instructed that the staffing plan should discuss how each offeror will recruit, obtain, and retain employees, as well as use and retain incumbent employees. *Id.* at 96. The RFP also instructed that each offeror should propose a "General Manager." RFP at 96. The RFP explained that the general manager is the senior contractor management representative responsible for all activities conducted at the National Training Center. *Id.* at 262. The RFP required the general manager to possess a minimum of 20 years' experience of progressively responsible assignments with 10 years' experience in a technical/managerial supervisory position. *Id.* The general manager also was required to have managerial experience overseeing a staff of 50 or more persons with an operating budget of at least $10 million per year. *Id.*

When evaluating proposed staffing approaches, the agency would assess whether each plan would ensure a qualified, capable, and adequate workforce. RFP at 108-109. The agency would also examine whether the proposed general manager satisfies the position qualifications and demonstrates likely successful performance. *Id.* at 109.

We discuss Kūpono's challenges to its and Eagle Harbor's staffing plans in turn.

<u>Kūpono's Staffing Plan</u>

The agency evaluated Kūpono's staffing plan as warranting an "outstanding" rating. AR, Tab C.2, TEC Report at 211. One significant strength was assigned because Kūpono proposed a candidate for general manager who exceeded the RFP position requirements. *Id.* at 211-212. DOE also assigned two strengths. One strength was assigned because Kūpono demonstrated a beneficial approach to cross-training personnel. *Id.* at 214-215.

The other strength was assigned because Kūpono demonstrated favorable approaches to recruiting and retaining personnel. AR, Tab C.2, TEC Report at 213-214. The agency noted Kūpono's plans to retain its incumbent staff, employee referral program, use of certain job boards, and database of vetted candidates as beneficial features. *Id.* The agency also included the following relevant observations when evaluating Kūpono's revised proposal:

> The offeror made changes to their proposal relevant to this strength. In addition to some small changes in many of the areas of their approach, they added two subsections -- Section 2.3.3, [DELETED] and Section 2.3.4, [DELETED]. While these are important for inclusion, they did not impact the rating of this section as a strength. The telework approach is essentially the same as the government telework approach that has emerged during back-to-the-office planning and contains elements that the TEC identified as likely to increase the probability of successful performance. Likewise, while an emphasis on culture, connections among contract staff and management, and workforce morale is important, the section does not appreciably add to the elements of recruiting and retention beyond the previous approach. As a result, while improving their approach to this aspect of their staffing plan, these additions do not represent an appreciable increase in the probability of successful contract performance, therefore there is no change to the rating.

*Id.*

As referenced above, Kūpono argues that the agency unreasonably failed to assign another strength to its proposal for the telework plan and emphasis on culture features. Protest at 25. Kūpono asserts that it has implemented a new telework approach that adapts to post-pandemic work attitudes and incorporates an "Ohana" (*i.e.*, one family) style approach to employee morale that increases employee recruitment, retention, and productivity. *Id.* Despite these advantages, Kūpono argues that the agency unreasonably consolidated them into the strength for recruiting and obtaining an adequate workforce. *Id.* Further, Kūpono points out that the agency evaluators noted that Kūpono's telework plan appreciably increases the probability of successful performance; thus, according to Kūpono, the agency must assign another strength because such observation is consistent with the RFP's definition of a "strength." *Id.*; Comments at 22-23; *see also* AR, Tab C.1, Source Selection Plan at 9 (defining a strength as "[a]n attribute in the proposal that increases the probability of successful contract performance").

DOE responds that it reasonably evaluated Kūpono's telework approach and emphasis on culture. COS/MOL at 34. The agency explains that it reasonably considered these features and did not find that they warranted an additional strength. *Id.* at 35.

On this record, we do not find any basis to object to the agency's conclusion that these features did not constitute additional strengths. The record shows that the agency considered these features fully, and simply concluded that they did not represent marked benefits that appreciably increased the value or benefit of the firm's staffing approach. AR, Tab C.2, TEC Report at 214.

We are also unpersuaded that the agency is required to assign a strength to the firm's telework approach. While the evaluators noted that the plan contains elements that increase the probability of successful performance, the entire evaluation (as referenced above) shows that the agency considered any benefits offered by the telework plan as simply repetitive of the benefits offered under its general approach to recruitment and retention. AR, Tab C.2, TEC Report at 214; *see also* COS/MOL at 39. As a result, we agree with DOE that it reasonably did not assign another strength because it would have double-counted benefits that the agency already identified and credited to Kūpono. Accordingly, we deny the protest allegation.

<u>Eagle Harbor's Staffing Plan</u>

The agency evaluated Eagle Harbor's proposed staffing plan as warranting an "outstanding" rating. AR, Tab, C.2, TEC Report at 162. The agency assigned two significant strengths. *Id.* One significant strength was assigned because Eagle Harbor demonstrated a sound approach to ensuring the availability of qualified personnel that appreciably increased the likelihood of successful performance. *Id.* at 162-165. The other significant strength was assigned because Eagle Harbor's proposed general manager meets or exceeds all position qualifications, and the proposed candidate had six years' prior experience as the "General Manager" for the NTC. *Id.* at 165. Further, the agency noted that the proposed candidate earned top award fee honors in the final four years of his tenure and is well-known to both federal and incumbent contractor staff. *Id.*

Kūpono argues that the assigned rating is unreasonable because Kūpono proposed a better general manager candidate. Comments at 22. In this regard, Kūpono points out that its candidate has superior and more recent experience as the current general manager. *Id.* DOE responds that Kūpono's arguments simply represent disagreement with the agency's judgment and do not demonstrate that the assignment of a "significant strength" or an "outstanding" rating was unreasonable. COS/MOL at 42.

On this record, we do not have any basis to object to the agency's evaluation. The record shows that Eagle Harbor's proposed candidate has experience that meets or exceeds the position requirements. *Compare* AR, Tab B.2.3, Eagle Harbor Proposal, Volume II at 134-136 *with* RFP at 96. To illustrate, Eagle Harbor's proposed candidate has more than 20 years' professional business experience with 10 years' experience in technical and management positions. AR, Tab B.2.3, Eagle Harbor Proposal, Volume II at 134. Indeed, the candidate has spent the past six years as a deputy director for a nuclear operators' training program and spent the preceding six years as the general manager for the NTC. *Id.* Additionally, the candidate's resume shows that his performance as the NTC general manager garnered "outstanding" ratings. *Id.* Thus, we do not find any error in the evaluation because our review confirms that the record contains credible support for the agency's judgments.

While Kūpono may argue that its candidate demonstrates more beneficial experience, we fail to see how this renders unreasonable the agency's evaluation of Eagle Harbor's staffing plan. Put simply, whether Kūpono's candidate demonstrates better experience is an argument that the tradeoff analysis is unreasonable, not a cognizant challenge to the evaluation of Eagle Harbor's proposal. Accordingly, we deny this protest allegation.

Kūpono's Management Approach

Kūpono argues that the agency unreasonably evaluated its management approach for a variety of reasons. Principally, Kūpono argues that the agency unreasonably failed to evaluate its proposed transition plan. The firm also argues that DOE unreasonably assigned a "satisfactory" rating because the firm's management approach was not evaluated as demonstrating any risks or weaknesses. Finally, Kūpono argues that the agency unreasonably failed to assign a significant strength to the firm's unified benefits and compensation plan. The agency counters that it reasonably evaluated the firm's approach consistent with the terms of the solicitation.

By way of additional background, the RFP explained that each offeror's business management approach consisted of both a business management plan and a transition plan. RFP, amend. 1 at 9. The business management plan should address the offeror's organizational structure, lines of authority, internal communication strategies, approach to new challenges, and the alignment of business processes between prime and subcontractor entities. *Id.* at 9-10. The transition plan should explain how the offeror planned to assume performance within a 60-day transition period. *Id.* at 10. The transition plan should identify key challenges, significant risks, mitigation measures to ensure adequate assumption of responsibilities, and any security authorizations or facility approvals necessary. *Id.*

When evaluating each offeror's business management approach, the agency would consider multiple criteria. DOE would assess the ability of each offeror's business management approach to perform the objectives of the PWS, the alignment of the proposed organization with the proposed technical approach, and the rationale for and benefits of the proposed organizational structure. RFP, amend. 1 at 12-13. The agency would also assess the proposed communication strategies, the capability of each offeror in mitigating conflicts between performing entities, the approach to managing changing requirements, and the effectiveness of the business process alignment and ability to provide stable operations between employees of different performing entities. *Id.* at 13. Additionally, the agency would assess each offeror's proposed transition approach for ensuring an orderly transition from the incumbent contractor. *Id.*

As referenced above, Kūpono's business management approach was evaluated as "satisfactory." AR, Tab C.2, TEC Report at 216. The agency evaluators noted that Kūpono's business management approach met the criteria established by the RFP but did not provide any benefits that would exceed the performance requirements. *Id.* The agency evaluators recognized several proposed features, such as Kūpono's proposed [DELETED], the authority of the proposed general manager, and proposed lines of authority, and noted that they did not offer special benefits or enhanced performance. *Id.* at 216-217. To the contrary, the agency evaluators noted that some of Kūpono's proposed strategies--that is, the plan to add another layer of contract oversight--potentially creates redundant oversight and increased costs. *Id.*

The SSO similarly rated Kūpono's business management approach as "satisfactory." AR, Tab C.6, SSDD at 25. The SSO noted that Kūpono's proposed approach contained mostly standard features that did not offer any special advantages. *See id.* For instance, the SSO explained that Kūpono's proposed [DELETED] did not offer any benefit when compared to general corporate oversight. *Id.* The SSO also noted that Kūpono "provided an acceptable presentation on their contract transition strategy." *Id.* The SSO also noted that Kūpono proposed to use the same systems and offer parity in benefits between the firm and its subcontractor, but that the firm's proposal did not include sufficient evidence to verify the assertion. *Id.*

We discuss Kūpono's specific challenges in turn.

<u>Kūpono's Transition Plan</u>

Kūpono argues that the agency unreasonably failed to evaluate the firm's transition plan as required by the solicitation. Comments at 9. As support, Kūpono points out that the TEC report does not mention or reference its plan. *Id.* at 10 ("There is nothing, whatsoever, in the TEC Report demonstrating that the TEC actually evaluated the transition plan element of offerors' Business Management Approaches. This failure alone renders the evaluation unreasonable.") (internal citation omitted). Kūpono then argues that, had the agency evaluated its plan, then it would have assigned a significant strength because it proposed a faster transition period than the 60-day period provided for in the solicitation. *Id.* Kūpono further faults the agency for failing to explain why a faster transition period was not a special benefit. *Id.*

The agency responds that it reasonably evaluated Kūpono's transition plan in accordance with the solicitation. COS/MOL at 46. The agency explains that its evaluators specifically noted in the TEC report that only areas explicitly identified as strengths, significant strengths, weaknesses, or deficiencies would be discussed, and that elements not discussed were evaluated but simply determined not to be noteworthy. *Id.* at 46 (quoting AR, Tab C.2, TEC Report at 17). Thus, while the agency evaluators did not discuss the transition plan, DOE argues that this was not an error since they simply determined that the transition plan satisfied the requirement. *Id.* The agency further argues that Kūpono's transition plan did not warrant a strength because a faster transition plan was not particularly beneficial. *Id.* at 45 ("Kūpono's offer of a low-cost, low-risk, 30-day transition that retains incumbent employees is a common, expected approach to transition for an incumbent which meets but does not exceed the criteria of 'reasonableness' found in the RFP.").

On this record, we do not find that the agency failed to evaluate Kūpono's transition plan. Consistent with the agency's position, our review confirms that the agency evaluators did not discuss parts of proposals that were evaluated as satisfying solicitation requirements but not as representing any particular advantage or disadvantage. AR, Tab C.2, TEC Report at 17. Thus, we do not find Kūpono's argument persuasive because the agency explains that its evaluators considered Kūpono's transition plan as representing a standard approach, and that therefore they would have omitted any detailed discussion of the approach.

Moreover, the record affirmatively shows that the agency considered the transition plan as part of its evaluation. In the SSDD, the SSO specifically noted that Kūpono "provided an acceptable presentation on their contract transition strategy." AR, Tab C.6, SSDD at 25. Additionally, in the tradeoff analysis, the SSO referred to the transition plan as a "streamlined transition plan that took advantage of their position as the incumbent contractor." *Id.* at 26. Thus, we do not find Kūpono's allegation persuasive because it is inconsistent with the SSO's evaluation which plainly shows that the firm's transition plan was considered as part of the evaluation and tradeoff analysis.

Finally, we disagree with Kūpono that the agency unreasonably failed to assign a strength to its transition plan. While Kūpono may view a faster transition period as representing a special advantage, the agency did not share that view, and the evaluation criteria do not provide that the agency would assign a strength for a faster transition period. Thus, we deny this protest allegation because Kūpono's argument simply disagrees with the agency's evaluation judgments regarding the relative worth of offering a faster transition period. *See Oshkosh Defense, LLC*, *supra*.

<u>Kūpono's Unified Compensation and Benefits System</u>

Kūpono complains that the effectiveness of its unified compensation and benefits system should have been evaluated as a significant strength. Comments at 12-14. Kūpono argues that the solicitation required the agency to assign a strength when an offeror demonstrated an effective unified compensation and benefits systems, but that the agency did not reasonably consider how Kūpono's system would yield stable operations and equitable treatment of employees. *Id.* DOE responds that the solicitation's evaluation criteria did not require the agency to evaluate the effectiveness of an offeror's compensation and benefits system. COS/MOL at 45-46.

On this record, we have no basis to object to the agency's evaluation. The RFP's instructions (*i.e.*, section L of the RFP) provided the following:

> An offeror who can demonstrate an effective unified compensation and benefits system, that's equitable to employees of the performing entities working at the NTC, may be rated more favorably.

RFP, amend. 1 at 10. Meanwhile, the RFP's business management approach evaluation criterion (*i.e.*, section M of the RFP) did not provide that the agency would evaluate the effectiveness of each offeror's unified compensation and benefits system. *Id.* at 12-13. This observation is significant because information provided in section L of an RFP is not the same as the evaluation criteria in section M; rather than establishing minimum evaluation standards, section L generally provides guidance to assist offerors in preparing and organizing their proposals. *University Research Co., LLC*, B-294358.6, B-294358.7, Apr. 20, 2005, 2005 CPD ¶ 83 at 18.

While Kūpono argues that one part of the business management approach evaluation criterion required DOE to evaluate the effectiveness of a unified compensation and benefits system, we are unpersuaded. The relevant part provides, "[t]he effectiveness of the business process alignment approach and its ability to provide stable operations including its impact on the equitable treatment of employees amongst the performing entities." RFP, amend. 1 at 13. As the agency explains, this provision does not explicitly require the agency to evaluate the effectiveness of a compensation and benefits system. COS/MOL at 46. Thus, we deny the allegation because the agency did not unreasonably fail to evaluate the effectiveness of Kūpono's compensation and benefits plan, as that was not required under the terms of the evaluation criterion.

<u>Assignment of a "Satisfactory" Rating</u>

Kūpono argues that the agency unreasonably assigned its proposal a "satisfactory" rating. As support, Kūpono explains that the agency was limited to assigning a "satisfactory" rating to instances where a proposal demonstrated "some risk" or at least one weakness. Comments at 11. Because its proposal was not assessed as having a single weakness in this area, Kūpono argues that it should have been assigned a higher adjectival rating. *Id.* at 11-12.

The agency responds that it reasonably assigned a "satisfactory" rating because it identified some risk present in the firm's business management approach. COS/MOL at 49. DOE explains that it found Kūpono's organizational structure as introducing an additional layer of oversight that was unnecessary, redundant, and could increase costs. *Id.* at 49-50. In this regard, DOE explains that Kūpono's proposal, in at least one instance, included having a manager oversee a program where the manager lacked any special knowledge in that area. *Id.* at 50.

We dismiss this allegation as legally insufficient. Our Bid Protest Regulations require that a protest include a detailed statement of the legal and factual grounds, and that the grounds stated be legally sufficient. 4 C.F.R. § 21.1(c)(4), (f). Any allegation challenging only the assigned adjectival rating is legally insufficient and therefore subject to dismissal because adjectival ratings are only guides to intelligent decision-making. *Picturae, Inc.*, B-419233, Dec. 30, 2020, 2021 CPD ¶ 13 at 5. The evaluation process is not simply a matter of mechanically counting the assigned strengths and weaknesses, but rather must qualitatively assess the relative technical merit of the proposal. *Id.* Thus, Kūpono's assertion that it should have been assigned an "outstanding" as opposed to a "satisfactory" rating based on the absence of any evaluated risk or weaknesses is an insufficient basis for protest because it does not, by itself, identify any problem with the underlying technical evaluation.

In any event, we disagree that the agency assigned the incorrect adjectival rating. The source selection plan (SSP) defined a satisfactory rating as the following:

> The proposal demonstrates a satisfactory understanding of the contract requirements, and an acceptable approach to perform the work that results in a likely probability of successful contract performance which will also meet performance expectations. Such a proposal would normally exhibit some risk, significant strengths and/or strengths, and offsetting significant weaknesses and/or weaknesses.

AR, Tab C.1, SSP at 7. Our review of the agency's evaluation confirms that the agency identified some risk associated with the proposed organizational structure. Indeed, the agency evaluators explained the following:

> Also, the revised proposal did not offer a rationale that adding additional oversight within the organization addresses any identified problem. As an example, the newly created [DELETED] is proposed to serve as the deputy to the Director of Training, providing increased managerial oversight over several functions. However, no specific issue that is most efficiently addressed by adding another level of oversight. Indeed, the functions that are included in these new duties are already overseen by other contractor managers. In at least one instance, the [contractor acquisition university (CAU)] program, there is no nexus between the *federal* technical qualifications program and *contractor* procurement training being offered by CAU. Therefore, in the CAU example, the proposed approach adds a layer of management by an individual who may lack knowledge of the area and whose prior experience demonstrates no connection to this work.

AR, Tab C.2, TEC Report at 217-218. The agency explains:

> These changes are essentially an internal contractor reorganization that does not clearly focus upon an identified problem area, increases contract cost, and has not been fully evaluated for possible adverse consequences such as redundant oversight and direction.

*Id.* Thus, we do not object to the assignment of a “satisfactory” rating because the agency identified some aspects of Kūpono’s proposed approach that exhibited some risk of poor performance. Accordingly, we deny the protest allegation.

Past Performance

Kūpono argues that the agency unreasonably evaluated both its and Eagle Harbor’s referenced past performance. DOE counters that its evaluation was reasonable.

As background, the RFP instructed offerors to identify two contracts demonstrating the past performance for the offeror. AR, Tab A.4, RFP, amend. 3 at 13-14. The offeror may use past performance information from a parent or affiliate company, so long as the offeror demonstrates that the parent or affiliate company’s resources will have meaningful involvement in contract performance. *Id.* at 13. The RFP also instructed offerors to identify two contracts demonstrating the past performance of any major subcontractor (*i.e.*, contractor proposed to perform at least 20 percent of the work). *Id.*

All referenced contracts must be recent and similar in size, scope, and complexity to be considered relevant. RFP, amend. 3 at 13. For the prime contractor’s referenced performance, the RFP defined size, recentness, scope, and complexity as follows:

- Similar Contract Value: Greater than $5 Million/year
- Recent Contracts: At least two years completed, with a term ending within 5 [years] from date of RFP closing.
- Similar Scope: Performing the functions identified in [contract line item numbers (CLIN)] 1000-3000
- Similar Complexity: Projects with similar challenges and risks

*Id.*[3] Any major subcontractor’s referenced performance must meet the same criteria, except its contracts need only exceed $1 million per year to be determined of similar value. *Id.*

Each offeror was also instructed to provide past performance questionnaires (PPQ) for the identified contracts, and request persons completing the PPQs e-mail them directly to DOE. RFP, amend. 3 at 14-15. The RFP stipulated that a contractor performance assessment reporting system (CPARS) report may be provided in lieu of a PPQ. *Id.* at 15.

When evaluating referenced past performance, the RFP advised that the agency would consider the recentness, relevancy, and favorability of the offeror’s performance for

[3] The contract schedule included three CLINs, CLIN 1000, 2000, and 3000. RFP at 7-8. CLIN 1000, NTC management operations and training corresponded to the task areas under PWS §§ 1.1-1.5, CLIN 2000, strategic partnerships corresponded to the task areas under PWS §§ 2.1-2.3, and CLIN 3000, custodial services and grounds maintenance corresponded to the task areas under PWS §§ 3.1-3.2. RFP at 247-261.

each identified contract. RFP at 109. The identified contracts must reference performance that is similar in size, scope, and complexity. *Id.* The evaluation criterion also advised that an offeror could rely on the experience of an affiliate company, so long as the affiliate company will have meaningful involvement in performance of the contract. *Id.* at 109-110.

The RFP also included the following advisement:

> Sources of past performance information. <u>Note: The Offeror is solely responsible for providing examples of past performance and shall not rely on the Government to acquire past performance information if submitted past performance information is incomplete or absent.</u> The Government will evaluate past performance information provided by the offeror and other available information. The Government may contact any or all of the references provided by the offeror and will consider such information obtained in its evaluation. The Government may also consider past performance information from sources other than those provided by the offeror, such as commercial and government clients, government records, regulatory agencies, and government databases such as the [CPARS].

*Id.* at 110.

Where a protester challenges an agency's past performance evaluation, we will review the evaluation to determine if it was reasonable and consistent with the solicitation's evaluation criteria. *Arcticom, LLC*, B-421256, B-421256.2, Dec. 28, 2022, 2023 CPD ¶ 13 at 5. An agency's evaluation of past performance, which includes its consideration of the relevance, scope, and significance of an offeror's performance history, is a matter of discretion which we will not disturb unless the assessment is unreasonable or inconsistent with the solicitation criteria. *Id.*

We discuss the challenges in turn.

<u>Kūpono's Past Performance</u>

As part of its proposal, Kūpono identified two contracts demonstrating its or an affiliate company's quality of performance. AR, Tab B.1.2, Kūpono Proposal, Volume II at 96-104. One contract referenced its performance for the incumbent contract, and the other referenced an affiliate company's performance providing range and base operations support services to the Navy's Pacific Missile Range Facility (PMRF) in Kekaha, Hawaii. *Id.* The PMRF contract referenced performance managing over 570 employees providing a range of support services from October 2008 through December 2020. *Id.* The PMRF contract was valued at $902 million, or at $75 million per year. *Id.* Kūpono also identified two contracts for its proposed major subcontractor. *Id.* at 113-115.

DOE evaluated Kūpono's past performance as "favorable." Both contracts were evaluated as similar in size, scope, and complexity. AR, Tab C.2, TEC Report at 219-220. The agency recognized that Kūpono had demonstrated "excellent" quality of performance for the incumbent contract. *Id.* at 219. Regarding the PMRF contract, however, DOE explained that the Navy did not return the PPQ and therefore DOE evaluated the identified contract as "neutral." *Id.* at 220. DOE also searched CPARS for any reports but concluded that any information available did not impact the evaluation. *Id.* Based on the evaluation, DOE concluded that Kūpono's referenced past performance met all requirements and that the firm would likely experience no problems with performance. *Id.*

Kūpono complains that the agency unreasonably failed to find and consider the CPARS reports for the PMRF contract because this information was "too close at hand" to ignore. Protest at 38-40. Kūpono explains that, since 2018, its affiliate company received "exceptional" ratings for this contract. *Id.* at 39-40. Thus, Kūpono argues that, had the agency considered the CPARS reports, it would have identified a potential discriminating factor between its proposal and Eagle Harbor's proposal. *Id.* at 40. DOE responds that it reasonably evaluated Kūpono's referenced past performance in accordance with the terms of solicitation. COS/MOL at 79-80. Further, DOE argues that Kūpono did not suffer any competitive prejudice because it already evaluated Kūpono as receiving the highest rating. *Id.* at 80.

On this record, we find no basis to object to the agency's evaluation of Kūpono's past performance. The RFP provided, as part of the evaluation criterion, the following advisement:

> Note: The Offeror is solely responsible for providing examples of past performance and shall not rely on the Government to acquire past performance information if submitted past performance information is incomplete or absent.

RFP at 110. Thus, under the plain terms of the solicitation, the agency was under no duty whatsoever to search the CPARS for the past performance record for Kūpono's affiliate company; rather, Kūpono had the unequivocable duty to demonstrate its quality of performance by submitting the requisite information itself or ensuring that the appropriate contracting official submitted the information.

Further, we are not persuaded that the past performance information was "too close at hand" simply because the information was in the CPARS. We have recognized in certain limited circumstances, an agency has an obligation (as opposed to the discretion) to consider "outside information" bearing on an offeror's past performance when it is "too close at hand" to require offerors to shoulder the inequities that spring from an agency's failure to obtain and consider the information. *Leidos Innovations Corp.*, B-415514 *et al.*, Jan. 18, 2018, 2018 CPD ¶ 88 at 11. Significantly, the application of this principle is limited to situations where the alleged "close at hand" information relates to contracts for the same services with the same procuring activity, or information personally known to the evaluators. *Id.* Thus, we decline to find that any CPARS reports for the PMRF contract were "too close at hand" because this acquisition is for different services conducted by a wholly different agency, and the record contains no evidence that information regarding the PMRF contract is personally known to the evaluators. Accordingly, we deny the protest allegation.

<u>Eagle Harbor's Past Performance</u>

When demonstrating its past performance, Eagle Harbor identified two contracts performed by affiliate companies and two contracts performed by its proposed major subcontractor. AR, Tab B.2.3, Eagle Harbor Proposal, Volume II at 124-132. One contract referenced performance by an affiliate company providing professional, administrative, and technical support services to the Drug Enforcement Agency (DEA). *Id.* at 125-127. This contract was valued at $136 million and referenced performance conducted between June 2011 and December 2017. *Id.* at 125. Eagle Harbor described its affiliate company's performance as involving training, planning, and management support functions similar to PWS §§ 1.1, 1.2, and 1.4, as well as facilities management and IT management similar to PWS §§ 1.3 and 1.5. *Id.* at 125-126. Eagle Harbor also described this contract as providing services similar to CLIN 2000. *Id.* at 126.

Eagle Harbor's other identified contract referenced performance by an affiliate company providing installation support services to the Army at Yuma Proving Ground, Arizona. AR, Tab B.2.3, Eagle Harbor Proposal, Volume II at 127. This contract was valued at $36.5 million and referenced performance conducted between September 2018 and September 2023. *Id.* Eagle Harbor described its affiliate company's performance as involving facilities management, grounds maintenance, and custodial services similar to PWS § 1.3. *Id.* at 127-128.

DOE evaluated Eagle Harbor's past performance as warranting a "favorable" rating. AR, Tab C.2, TEC Report at 172. The agency evaluated each of the identified contracts as being recent and similar in size, scope, and complexity. *Id.* As relevant here, DOE evaluated the identified contract performing services for the DEA as involving functions similar to CLIN 1000 and 2000. *Id.* DOE also evaluated the identified contract providing services for the Army as involving functions similar to CLIN 1000 and 3000. *Id.* at 172-174. DOE noted that the affiliate companies demonstrated "very good" and "exceptional" performance. *Id.*

DOE evaluated the major subcontractor's referenced performance as being recent and relevant in terms of size, scope, and complexity. AR, Tab C.2, TEC Report at 173-174. The agency concluded that both referenced contracts included functions similar to CLIN 1000 and demonstrated "exceptional" performance. *Id.*

Kūpono argues that the agency unreasonably evaluated Eagle Harbor's past performance as "favorable" because the evaluators did not identify any of Eagle Harbor's referenced contracts as demonstrating functions similar to CLIN 2000, strategic partnerships. Protester's Comments at 31-32. DOE responds that it reviewed Eagle Harbor's DEA contract as similar enough to CLIN 2000 to be considered relevant in terms of scope. COS/MOL at 81.

We have no basis to object to the agency's evaluation. Our review of the record shows that Eagle Harbor explained that its affiliate company drafted and prepared a training manual for DEA personnel providing instruction regarding pre-award phases of the acquisition process. AR, Tab B.2.3, Eagle Harbor, Volume II at 127. Indeed, Eagle Harbor's proposal explained the following:

> Our personnel completed an entirely new Pre-award training manual for Contracting Officers, Contract Specialists and selected Program Area offices. This document significantly streamlined the transfer of knowledge on office procedures, policies and protocols in the delivery of the pre-award phases of the acquisition lifecycle.

*Id.* Consistent with DOE's position, we view this experience as similar to the task area under PWS § 2.1, contractor acquisition university, which requires the contractor to provide advanced acquisition training for agency procurement officials. RFP, amend. 1 at 33. Thus, we deny this allegation because the record contains evidence supporting DOE's conclusion that Eagle Harbor demonstrated relevant past performance.

Cost Realism Evaluation

Kūpono complains that the agency unreasonably conducted the cost realism evaluation. The protester argues that the agency unreasonably evaluated Eagle Harbor's proposed fringe benefit rates as realistic, and that Eagle Harbor's lower fringe benefit rates reflected risk in the firm's technical proposal. *See* Comments at 3-8. DOE counters that it reasonably evaluated Eagle Harbor's cost proposal. COS/MOL at 83-98.

The RFP instructed offerors to complete a cost/price matrix by providing cost/price summaries for each of the CLINs--that is, CLIN 1000, NTC management, operations and training; CLIN 2000, strategic partnerships; and CLIN 3000 custodial services and grounds maintenance. RFP at 7-8; RFP, amend. 3 at 16. For CLIN 1000, the matrix provided the labor categories and quantity of hours, and offerors were required to incorporate their labor rates and indirect costs (including overhead, fringe, and general and administrative rates), subcontractor rates, and applicable base and award fee percentages. RFP, amend. 3, at 16-19.; RFP, attach. F, Cost/Price Matrix. The matrix included agency-provided numbers for other direct costs, including travel, materials, equipment, and supplies. COS/MOL at 84.

For CLIN 2000, the matrix provided an agency-provided number, and offerors were required to calculate a proposed price by using their base and award fee percentages and any applicable state gross receipts tax rate. RFP, attach. F, Cost/Price Matrix; COS/MOL at 84. For CLIN 3000, offerors were required to provide proposed pricing. COS/MOL at 84.

The RFP advised that the agency would evaluate whether proposed costs (*i.e.*, CLIN 1000) were realistic. AR, Tab A.15, RFP, amend. 14 at 2. DOE would assess whether proposed costs for CLIN 1000 were realistic for the work to be performed, reflected a clear understanding of the requirements, and were consistent with the proposed technical and management approaches. *Id.* Based on the assessment of the proposed pricing, the agency would develop a probable cost of performance for each offeror by adjusting rates to realistic levels. *Id.* The agency would then compute the evaluated price by summing the most probable cost for CLIN 1000 and the proposed prices for CLINs 2000 and 3000. *Id.*

Eagle Harbor proposed a total price of $318,949,039. AR, Tab C.4, Cost Report at 3. The agency examined Eagle Harbor's proposed costs, determined that they were too low, and adjusted them upward by $26,271,142. *Id.* at 55. In so doing, the agency first noted that Eagle Harbor proposed to utilize incumbent employees, but that the firm's proposed direct labor rates were below the incumbent's rates. *Id.* at 62. The agency also noted that Eagle Harbor did not propose an escalation rate for employees covered by the Service Contract Act (SCA), determined that this was unrealistic, and applied Eagle Harbor's proposed escalation rate to these employees as well. *Id.*

DOE also examined Eagle Harbor's proposed indirect rates and concluded that they were all realistic. AR, Tab C.4, Cost Report at 66. Further, the agency noted that it specifically compared Eagle Harbor's proposed fringe benefit rate against the other offerors' proposed rates. *Id.*

When examining that Eagle Harbor matrix, DOE noted that the firm incorrectly assumed that the agency-provided number for other direct costs (ODC) was only for materials or consumable items; rather, the agency noted that the ODC should be burdened by the general and administrative rate and adjusted the firm's proposed costs accordingly. AR, Tab C.4, Cost Report at 66. Additionally, DOE increased the total indirect costs when it applied the indirect rates to the adjusted base costs. *Id.* DOE also examined that subcontractor's proposed costs and adjusted them similarly. *Id.* at 66-84. The agency also reviewed Eagle Harbor's proposed base and award fees and determined that they were realistic. *Id.* at 84.

As referenced above, Kūpono contends that the agency unreasonably failed to adjust upward Eagle Harbor's proposed fringe rates to match the incumbent's fringe rates, since Eagle Harbor proposed to utilize all incumbent employees. *See* Protester's Comments at 4. Kūpono also contends that the agency failed to recognize that Eagle Harbor's low proposed rates reflected risk in the firm's technical proposal. *Id.* at 6-8.

DOE counters that it carefully examined Eagle Harbor's proposed rates and adjusted them where necessary. COS/MOL at 88. DOE also explained that it reasonably determined that Eagle Harbor would be able to recruit and retain the incumbent personnel at the adjusted labor rates, and that, therefore, no problems existed with the firm's staffing approach. *Id.* at 94.

When an agency evaluates a proposal for award of a cost-reimbursement contract, an offeror's proposed costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. FAR 15.305(a)(1), 15.404-1(d). Consequently, an agency must perform a cost realism analysis to determine the extent to which an offeror's proposed costs are realistic for the work to be performed. FAR 15.404-1(d)(1). An agency is not required to conduct an in-depth cost analysis or verify each and every item in assessing cost realism; rather, the evaluation requires the exercise of informed judgment by the contracting agency. *BEAT, LLC*, B-418235, B-418235.2, Jan. 30, 2020, 2020 CPD ¶ 64 at 6-7. Because the agency is in the best position to make the cost realism determination, our review is limited to determining whether its cost evaluation was reasonably based and not arbitrary. *ABSG Consulting, Inc.*, B-407956, B-407956.2, Apr. 18, 2013, 2013 CPD ¶ 111 at 7.

Under this standard, we have reviewed Kūpono's challenges to DOE's cost realism evaluation and find no basis to object. First, we are unpersuaded by Kūpono's challenge that the agency failed to adjust upwardly Eagle Harbor's proposed fringe benefit rates. The record shows that the agency considered Eagle Harbor's proposed fringe benefit rate, compared the rate against its competitor's rates, and determined that the rate was realistic. AR, Tab C.4, Cost Report at 66. While Eagle Harbor's proposed fringe benefit rate is lower than Kūpono's proposed rate, the agency explains offerors' rates are never identical because the rates depend on each offeror's insurance rates and other idiosyncratic qualities. COS/MOL at 92-93. Further, the agency explains that it reviewed Eagle Harbor's proposed benefits package and determined that the package was sufficient to recruit and retain personnel. *Id.* at 93. Finally, the agency points out that Kūpono never identified any significant difference between the offerors' proposed fringe benefit packages that would support an upward adjustment to Eagle Harbor's proposed fringe benefit rate. *Id.*; *see* Supp. Protest at 35-36. Accordingly, we deny the protest allegation.

Likewise, we are unpersuaded that the agency should have assigned risk to Eagle Harbor's technical proposal because DOE upwardly adjusted Eagle Harbor's proposed labor rates. The record shows that DOE adjusted Eagle Harbor's proposed rates to match the current rates paid by the incumbent contractor because Eagle Harbor proposed to retain all the incumbent staff and concluded that Eagle Harbor would be able to retain the incumbent staff at its proposed compensation levels. See AR, Tab C.3, Technical Evaluation of Cost Report at 3 ("The TEC's expectation is that all incumbent staff would be retained by Eagle Harbor and there are no known reasons why any incumbent would not be retained with the exception of the General Manager.").

In this regard, the agency explains that it viewed the upward adjustment as mitigating any risk that Eagle Harbor would be unable to retain current staff. COS/MOL at 91. The agency further explains that it did not view this upward adjustment as representative of underlying risk in Eagle Harbor's technical proposal because it concluded that Eagle Harbor was unaware of the incumbent's precise labor rates, and that the higher rate would be paid as allowable costs. *Id.* Thus, we agree that the agency reasonably did not conclude that the lower rates were reflective of some risk in the firm's technical approach because the record shows that the upward adjustment did not reflect misunderstanding of the technical requirements by Eagle Harbor. *See Innovative Test Asset Solutions, LLC*, B-411687, B-411687.2, Oct. 2, 2015, 2016 CPD ¶ 68 at 9 ("Quite simply, while cost risk to the agency is to be taken into account as part of the cost realism evaluation, we find that lack of realistic cost savings does not by itself represent technical risk to be taken into account under the [respective] subfactor."); *BTAS, Inc.; Innovative Techs., Inc.*, B-415810.4 *et al.*, Oct. 3, 2018, 2018 CPD ¶ 346 at 17 ("Nothing prohibits an agency from deciding that an offeror's technical approach merits a positive rating, while also making cost adjustments as part of its cost realism assessment."). Accordingly, we deny the protest allegation.

Tradeoff Analysis

Finally, Kūpono complains that the agency made an unreasonable best-value tradeoff. Kūpono argues that the tradeoff analysis was flawed because it was based on misevaluations identified above. This allegation is derivative of the challenges to the agency's evaluations which we have denied above. Thus, we dismiss this allegation because derivative allegations do not establish independent bases of protest. *Chugach Logistics-Facility Servs. JV, LLC*, B-421351, Mar. 21, 2023, 2023 CPD ¶ 80 at 11.

The protest is denied.

Edda Emmanuelli Perez
General Counsel