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Decision

Matter of: Magellan Federal, Inc.

File: B-422803; B-422803.2

Date: November 13, 2024

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Janis R. Millete, Esq., and John Sorrenti, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the agency accepted a deficient key personnel statement of commitment from the awardee is denied where the record demonstrates that the statement of commitment complied with solicitation criteria.
2. Protest challenging the availability of key personnel based solely on job postings by the awardee is dismissed as failing to state a valid basis of protest. Protest that a key person is unavailable based on a change in employment prior to award is denied where the record shows that all proposed key personnel submitted statements of commitment, none of these statements were revoked, and the awardee did not otherwise have actual knowledge that any of its proposed key personnel had become unavailable.
3. Protest that the awardee's proposal improperly took exception to the solicitation requirements is denied where the agency reasonably determined that the awardee's assumptions were not exceptions to the requirements.
4. Protest challenging various aspects of the agency's evaluation of the protester's proposal and best-value determination is denied where the agency's evaluation was reasonable and consistent with the terms of the solicitation.

DECISION

Armed Forces Services Corporation doing business as Magellan Federal, Inc. (Magellan), of Alexandria, Virginia, protests the issuance of a task order to Strategic Resources, Inc. (SRI), of Vienna, Virginia, under request for proposals (RFP) No. W15QKN-24-R-0016, issued by the Department of the Army, Army Material Command for master resilience training/training center support (MRT/TCS). The protester challenges multiple aspects of the agency's evaluation of proposals and the selection decision.

We dismiss the protest in part and deny it in part.

BACKGROUND

The Army issued the task order solicitation on March 1, 2024, to all contract holders of the Army's Human Resources Solutions (HRS) Personnel Life Cycle Support multiple award task order contract (MATOC). Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 2-3; Agency Report (AR), Tab 6, RFP at 1.¹ The resultant task order will support the Army Headquarters G9, Directorate of Prevention, Resilience and Readiness (DPRR) to increase the physical and psychological health, resilience, and performance of soldiers, families, Army civilians, and Department of Defense personnel, the Ready and Resilient programs, U.S. government agencies, and allied forces. AR, Tab 7, Performance Work Statement (PWS) at 1; COS/MOL at 2-3. The solicitation contemplated the issuance of a fixed-price task order with a "[c]ost [r]eimbursement (no fee) line item" for other direct costs with a period of performance that consisted of a 60-day transition period, an 11-month base period, and four 12-month option periods. RFP at 1; COS/MOL at 2; AR, Tab 12, Task Order Evaluation Plan (TOEP) at 1.

The solicitation established that award would be based on a best-value tradeoff considering two factors: technical and cost/price. TOEP at 1, 3-6. The solicitation provided that the technical factor was significantly more important than cost/price. *Id.* at 1. The solicitation explained that the technical factor consisted of the following "four areas" that would be evaluated but were "not subfactors" and not separately weighted: technical approach, staffing approach, management approach, and prior experience. *Id.* at 3-6.

Under the technical factor, the solicitation stated that technical proposals would be evaluated to assess the extent to which they demonstrated an understanding of the requirements, the completeness/adequacy of the response, and the feasibility of approach. *Id.* at 8-9. Proposals would be assigned a combined technical/risk rating based on the significant strengths, strengths, deficiencies, significant weaknesses, and uncertainties identified by the evaluators, as well as risk, defined as the potential for

¹ Unless otherwise noted, citations to the record reference the Adobe PDF document page numbers.

unsuccessful task order performance. *Id.* As relevant here, a “good” rating was assigned to a proposal with a “thorough approach and understanding of the requirements” that “contains at least one strength or significant strength, and risk of unsuccessful performance is low to moderate.” *Id.* An “outstanding” rating was assigned for a proposal with an “exceptional approach and understanding of the requirements” that “contains multiple strengths and/or at least one significant strength, and risk of unsuccessful performance is low.” *Id.*

The Army received and evaluated seven proposals, and the source selection authority selected SRI’s proposal for award. COS/MOL at 9-10; AR, Tab 50, Task Order Decision Document (TODD) at 2. The Army evaluated the protester’s and awardee’s proposals as follows:

	Magellan	SRI
Technical	Good	Outstanding
Price	\$218,919,437.74	\$202,978,667.81

AR, Tab 50, TODD at 4-5.

The agency assessed four strengths and one weakness to Magellan’s technical proposal and assigned a rating of good. *Id.* at 6-7. For SRI’s proposal, the agency assessed three significant strengths, one strength and no weaknesses, significant weaknesses, or deficiencies and assigned a rating of outstanding. *Id.* at 12. The Army concluded that SRI’s technical proposal was “superior to all other offerors” and provided the Army with the highest degree of confidence of successful task order performance. *Id.* at 18. The agency determined that the awardee’s cost/price was fair and reasonable. *Id.* at 19. Based on comparison of the proposals and a detailed assessment of the advantages and disadvantages associated with SRI’s proposal, the agency determined SRI’s proposal was the “overall best value to the Government.” *Id.*

On July 22, 2024, the Army notified Magellan that its proposal was not selected for award. COS/MOL at 10. Magellan received a debriefing, and this protest followed.²

DISCUSSION

Magellan challenges various aspects of the agency’s evaluation of proposals. Specifically, Magellan alleges that (1) the agency improperly accepted a deficient statement of commitment from one of SRI’s proposed key personnel; (2) certain SRI key personnel became unavailable to perform prior to award; (3) SRI’s proposal took

² The value of the task order here exceeds \$25 million. Accordingly, this protest is within our Office’s jurisdiction to resolve protests involving task orders issued under indefinite delivery, indefinite quantity contracts established pursuant to the authority in title 10 of the United States Code. 10 U.S.C. § 3406(f)(1)(B).

exception to the fixed-price contract type; (4) the agency impermissibly evaluated Magellan's transition plan on a pass/fail basis; (5) the weaknesses assessed to Magellan's proposal were unreasonable; (6) the agency's evaluation of proposals was unequal; (7) the agency failed to assign Magellan significant strengths and strengths under its technical factor approach; and (8) the agency's best-value determination was flawed because it ignored SRI's ineligibility for award and was based on an unreasonable evaluation.³ As discussed below, the record reflects that the agency reasonably evaluated proposals and concluded that SRI's proposal was the best value.⁴

As noted above, this procurement was conducted as a competition among MATOC contract holders and, as such, was subject to the provisions of Federal Acquisition Regulation (FAR) section 16.505. See RFP at 1. Where, as here, an agency conducts a task order competition as a negotiated procurement, our analysis regarding fairness will, in large part, reflect the standards applicable to negotiated procurements. *STG, Inc.*, B-411415, B-411415.2, July 22, 2015, 2015 CPD ¶ 240 at 8 n.7; see, e.g., *TDS, Inc.*, B-292674, Nov. 12, 2003, 2003 CPD ¶ 204 at 4; *Uniband, Inc.*, B-289305, Feb. 8, 2002, 2002 CPD ¶ 51 at 3-4. In reviewing a protest of an agency's evaluation of proposals, even in a task order competition, our Office will not reevaluate proposals but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. *Technology Concepts & Design, Inc.*, B-403949.2, B-403949.3, Mar. 25, 2011, 2011 CPD ¶ 78 at 8. Source selection officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results. *TRI-COR Indus., Inc.*, B-252366.3, Aug. 25, 1993, 93-2, CPD ¶ 137 at 11. A protester's disagreement with an agency's judgment in evaluating proposals is insufficient to establish that the agency acted unreasonably. *VT Griffin Servs., Inc.*, B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4.

In reviewing an agency's evaluation, we do not limit our consideration to the contemporaneous record, but instead consider all the information provided, including the parties' arguments and explanations. *NCI Info. Sys., Inc.*, B-418977, Nov. 4, 2020, 2020 CPD ¶ 362 at 9 n.10. Although we generally give little weight to reevaluations and judgments prepared in the heat of litigation, see *Boeing Sikorsky Aircraft Support*, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15, post-protest explanations that provide a detailed rationale for contemporaneous conclusions and simply fill in previously unrecorded details will generally be considered, so long as those

³ Magellan also initially alleged that the agency failed to engage in discussions but withdrew this protest ground after the agency filed its agency report. See Comments & Supp. Protest at 1 n.2.

⁴ The protester raises other collateral arguments, and although our decision does not specifically address every argument presented, we have considered each argument and find that none provide a basis on which to sustain the protest.

explanations are credible and consistent with the contemporaneous record. *Remington Arms Co., Inc.*, B-297374, B-297374.2, Jan.12, 2006, 2006 CPD ¶ 32 at 12.

Statement of Commitment from Key Personnel

Magellan argues that the agency should have found SRI's proposal to be unacceptable because SRI failed to comply with a mandatory and material solicitation requirement that each proposed key person provide a statement of commitment. See Comments & Supp. Protest at 3-5; Supp. Comments at 3-7.

As relevant here, under the staffing approach evaluation area, the solicitation identified four key personnel positions and stated that "[t]he offeror shall provide a narrative description of the experience and expertise for all key personnel team member(s) positions (prime and subcontractor)."⁵ TOEP at 4. In addition, the solicitation provided:

A statement of commitment from each individual proposed for a key personnel team member's position accepting employment under this [task order] shall be included. A statement of commitment is not required for key personnel that are currently employed by the offeror; however, the offeror shall provide a written statement that the individual is currently employed by their company.

Id. at 5.

The protester argues that the "agency prescribes specific requirements for the form or content of key personnel commitment letters [which] form a material component of the solicitation's submission requirements." Comments & Supp. Protest at 3. According to Magellan, the solicitation "specifically prescribed" that a person not currently employed by the offeror and proposed as a key person "must be the one to provide the statement of commitment." *Id.* at 3-4. Magellan alleges that SRI's proposal was deficient because the statement of commitment submitted for its proposed PMO SME was signed by the individual's employer, [DELETED], but was not signed by the proposed PMO SME. *Id.* at 4. As a result, the protester contends that because the statement of commitment failed to meet the solicitation's terms, the agency should have found SRI's proposal "technically unacceptable and therefore ineligible for award." *Id.* at 4-5.

The agency argues that Magellan's interpretation of the solicitation is incorrect. The agency contends that the statement of commitment is sufficient because [DELETED] is a subcontractor to the awardee and therefore it was appropriate for [DELETED] to "provide a written statement that the individual is currently employed by their company." See Supp. COS/MOL. at 4-5. In this regard, the agency maintains that the proposed PMO SME is already employed by a subcontractor to the awardee and was therefore

⁵ The four key personnel positions were program manager (PM), alternate program manager, program management office subject matter expert (PMO SME), and operations manager. TOEP at 4-5.

not “accepting employment under the [t]ask [o]rder because he was already on staff and would be retaining his position as [a [DELETED]] employee, sub-contracted, under SRI.” AR, Tab 1d, Supp. Decl. of Technical Factor Chair at 3. In other words, the PMO SME was already employed by the offeror and therefore did not need to submit a statement of commitment.

Where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. *Alluviam LLC*, B-297280, Dec. 15, 2005, 2005 CPD ¶ 223 at 2. Where a dispute exists as to a solicitation’s actual requirements, we will first examine the plain language of the solicitation. *Point Blank Enters., Inc.*, B-411839, B-411839.2, Nov. 4, 2015, 2015 CPD ¶ 345 at 4.

We find the agency’s interpretation regarding the statement of commitment submission requirements for SRI’s proposed PMO SME reasonable and consistent with the solicitation terms. As noted, the solicitation stated that “[a] statement of commitment is not required for key personnel that are currently employed by the offeror; however, the offeror shall provide a written statement that the individual is currently employed by their company.” TOEP at 5. Here, SRI’s proposed PMO SME is already employed by the offeror, one of SRI’s subcontractors. Consistent with the solicitation, the statement of commitment confirmed the proposed PMO SME is a current employee of [DELETED] and stated that “it is our commitment to have [the proposed PMO SME] serve in the position of . . . [PMO SME] . . . upon an award to [SRI].”⁶ AR, Tab 46, SRI Tech. Proposal at 6.

The protester also contends that the solicitation differentiated between individual members of an offeror’s team and the prime contractor when assigning responsibilities for submitting commitment letters. In support of its position, the protester asserts that the agency’s interpretation of the word “offeror” to include both the prime contractor and subcontractor is unreasonable because other parts of the solicitation referred separately to an “offeror and its proposed subcontractors.” Supp. Comments at 5 (quoting TOEP at 7). The protester argues that the word “offeror” with respect to the statements of commitment can refer only to the prime contractor. In other words, the protester argues that only prime contractors are authorized to forgo statements of commitment for currently employed key personnel and that other team members such as subcontractors or teaming partners, *i.e.*, [DELETED], are therefore required to submit statements of commitment for their key personnel. We do not agree with the protester’s interpretation.

⁶ In contrast, the statements of commitment from other key personnel not employed by SRI or one of its subcontractors expressly noted that they were “not a current employee of SRI” and committed to accept the key personnel position should SRI receive award. See AR, Tab 46, SRI Tech. Proposal at 4, 5.

Specifically, the other parts of the solicitation Magellan relies upon to support its interpretation are instructions for the price factor explaining that labor rates should be provided for both the offeror and any proposed subcontractors.⁷ We do not agree that this specific instruction requires that any other reference to the “offeror” must be read to refer exclusively to the prime contractor. To be sure, the protester ignores the fact that in the same section instructing offerors to submit statements of commitment for key personnel, the solicitation also stated that the “offeror shall provide a narrative description of the experience and expertise for all key personnel team member(s) positions (prime and subcontractor).” TOEP at 4. This language, included just before the instruction to provide statements of commitment, suggests that the word “offeror” includes all team members, both prime contractor and subcontractor, at least with respect to the instructions for key personnel statements of commitment.

Accordingly, we find that the agency reasonably accepted the statement of commitment from the PMO SME’s employer where the proposed individual was already employed by the awardee’s subcontractor. On these facts, this protest ground is denied.

Availability of Awardee’s Key Personnel

Magellan asserts that SRI is ineligible for award on the basis that at least three of the awardee’s proposed key personnel became unavailable to perform after SRI submitted its proposal but prior to award. Protest at 7-11; Comments & Supp. Protest at 9; Supp. Comments at 3-5. The protester contends that SRI knew its proposed key personnel were unavailable and failed to advise the agency of this fact. The protester’s argument is based on job announcements posted online by SRI that are “an exact replica of the key personnel minimum requirements” with at least one announcement posted five days before award to SRI. Protest at 8-10.

In response, the agency states that the awardee submitted statements of commitment for all proposed key personnel with its proposal in accordance with the solicitation requirements. COS/MOL at 13. The agency contends that the protester’s allegations are unsupported and based on “guess work” as to key personnel availability. See Supp. COS/MOL at 15-16. The agency also notes that SRI provided a declaration that none of the proposed key personnel have rescinded their statements of commitment. See Supp. COS/MOL at 15-16 (citing AR, Tab 4a, Decl. of SRI President at 1).

Our Office has explained that offerors are obligated to advise agencies of changes in proposed staffing and resources, even after the submission of proposals. *General*

⁷ For example, the solicitation required “[s]eparate fully burdened hourly labor rates should be proposed for the [o]fferor and its proposed subcontractors.” TOEP at 7. Additionally, under the “[firm-fixed price] labor” paragraph, the solicitation required “[t]he [o]fferor’s and any/all subcontractors’ proposed fully burdened hourly labor rates for each proposed labor category will be multiplied by the [o]fferor/subcontractors’ proposed number of labor hours to compute an extended price for each labor category for each CLIN.” *Id.* at 11.

Revenue Corp., et al., B-414220.2 *et al.*, Mar. 27, 2017, 2017 CPD ¶ 106 at 22. This premise is grounded in the notion that a firm may not properly receive award of a contract based on a knowing material misrepresentation in its offer. *M.C. Dean, Inc.*, B-418553, B-418553.2, June 15, 2020, 2020 CPD ¶ 206 at 4. While an offeror generally is required to advise an agency where it knows that one or more key employees have become unavailable after the submission of proposals, there is no such obligation where the offeror does not have actual knowledge of the employee's unavailability. *NCI Information Systems, Inc.*, B-417805.5 *et al.*, Mar. 12, 2020, 2020 CPD ¶ 104 at 8; *DZSP 21, LLC*, B-410486.10, Jan. 10, 2018, 2018 CPD ¶ 155 at 10.

On this record, we find the protester has failed to establish that SRI's proposed personnel became unavailable to work on the contract prior to contract award or, more importantly, that SRI had actual knowledge of any alleged unavailability at any point. SRI provided statements of commitment at the time of proposal submission for all proposed key personnel and there is no evidence in the record that any proposed key personnel revoked these commitments prior to award. The protester relies solely on job postings that contained duties similar to those provided under the solicitation's key personnel requirements. However, our Office has found that the recruitment of key personnel at the time of award, does not, by itself, establish that the proposed personnel were unavailable to perform the contract work. *Invertix Corp.*, B-411329.2, July 8, 2015, 2015 CPD ¶ 197 at 6.⁸ Therefore, we dismiss these allegations as failing to state legally sufficient grounds of protest. 4 C.F.R. §§ 21.1(c)(4), (f); 21.5(f).

In addition, Magellan argues that, according to a LinkedIn internet search,⁹ SRI's proposed PM started a new position with the [DELETED] more than three months before contract award. Comments & Supp. Protest at 8-9, 11-12. The protester contends that this, along with the SRI job postings, establishes that the PM became unavailable prior to award. *Id.* Here, the record shows that the proposed PM was not employed by SRI, but provided a statement of commitment in which he committed to accept the position should SRI receive the contract award. AR, Tab 46, SRI Tech. Proposal at 4. A proposed key person's acceptance of a new position is not probative of such person's unavailability, especially where, as here, that person is not an employee of the offeror at the time of proposal submission. See *ASRC Fed. Data Network Techs., LLC*, B-419519.4, Sept. 19, 2022, 2022 CPD ¶ 241 at 7. Moreover, the declaration provided by SRI states that the proposed PM's "commitment still stands and has not been withdrawn." AR, Tab 4a, Decl. of SRI President at 1. On these facts, we find that SRI did not have actual knowledge prior to award that its proposed PM was unavailable to perform. Accordingly, this protest ground is denied.

⁸ See also *Perspecta Engineering, Inc.*, B-420501.2, B-420501.3, Dec. 13, 2022, 2022 CPD ¶ 314 at 4. n.5 (dismissing protest allegation as failing to state a valid basis where "the singular fact proffered by the protester--that the awardee posted job listings that contained the same duties as two key personnel positions--[did] not, by itself, establish that the awardee's proposed key personnel were unavailable").

⁹ LinkedIn is a social media platform for professional networking.

SRI Took Exception to the Solicitation Requirements

Magellan argues that SRI's proposal improperly took exception to the solicitation's requirement to propose a fixed price. Comments & Supp. Protest at 7-8. Specifically, the protester argues that the agency should have rejected SRI's proposal because in a section titled "Pricing assumptions," the proposal impermissibly included the following statement: "The government will allow an equitable adjustment for substantial deviations from estimated requirements." *Id.* at 8 (quoting AR, Tab 46a, SRI Tech. Proposal at 1).

The agency responds that SRI's statement was "phrased as an assumption" and if required "SRI would request an equitable adjustment." Supp. COS/MOL at 14. The agency explains that SRI's proposal statement reflects the awardee's right to request an equitable adjustment if a change was necessary. *Id.* In this regard, the agency contends that SRI did not propose less staff to fulfill requirements and the agency explained that SRI would still be required to fulfill the fixed-price deliverables required under this contract, without additional compensation. See AR, Tab 1d, Supp. Decl. of Technical Factor Chair at 5.

A proposal that takes exception to a solicitation's material terms and conditions must be considered unacceptable for award. *BillSmart Sols., LLC*, B-413272.4, B-413272.5, Oct. 23, 2017, 2017 CPD ¶ 325 at 13. Material terms of a solicitation are those which affect the price, quantity, quality, or delivery of the goods or services being provided. *Id.* at 13-14; *Kratos Defense & Rocket Support Servs., Inc.*, B-413143.2, Aug. 23, 2016, 2016 CPD ¶ 227 at 5. Where a solicitation requests offers on a fixed-price basis, an offer that is conditional and not firm cannot be considered for award. *Dev Tech. Grp.*, B-412163, B-412163.5, Jan. 4, 2016, 2016 CPD ¶ 10 at 5; see *Advanced Techs. & Labs. Int'l, Inc.*, B-411658 *et al.*, Sept. 21, 2015, 2015 CPD ¶ 301 at 10. Nonetheless, this Office will not sustain a protest where the record reflects a procuring agency's reasonable determination that the awardee's proposal did not take exception to the solicitation's requirements. See *SRA Int'l, Inc.; NTT DATA Servs. Fed. Govt., Inc.*, B-413220.4 *et al.*, May 19, 2017, 2017 CPD ¶ 173 at 20-21.

Here, the solicitation required that offerors provide a list of "assumptions (both technical and cost/price), if any, used in the development of its proposal." TOEP at 2, 3. In this regard, as noted, SRI's proposal stated that the government would allow an equitable adjustment for substantial deviations from the estimated requirements. AR, Tab 46a, SRI Tech. Proposal at 1. In response to SRI's statement, the agency noted that "[a]ny substantial deviations from the requirements will be accomplished via negotiated task order modifications." AR, Tab 47a, SRI Tech. Eval. at 2.

On this record, we find nothing unreasonable in the agency's evaluation of SRI's proposal assumption. In this regard, SRI properly provided its list of assumptions in accordance with solicitation criteria. See TOEP 2, 3. As discussed above, the agency reasonably evaluated SRI's assumption and concluded that "[a]ny substantial deviations

from the requirements will be accomplished via negotiated task order modifications.” AR, Tab 47a, SRI Tech. Eval. at 2a. Here, the agency explains that SRI had a “right to request an equitable adjustment” which demonstrates that the agency did not consider the assumption as an impermissible exception to a solicitation requirement. See Supp. COS/MOL at 14. In addition, the agency reaffirms that “[t]he technical assumption is a correct assumption, that any substantial deviations . . . would require a modification, or equitable adjustment.” *Id.* (quoting AR, Tab 1d, Supp. Tech. Decl. of Technical Factor Chair at 5). In this regard, the agency has confirmed that rather than taking exception to a material term, the awardee has done nothing more than in very general terms confirmed the ordinary course of dealings between parties under a fixed-price contract whereby any contractor can seek an equitable adjustment when performance has substantially changed from that reasonably contemplated by the terms of the contract. See also *Dev Tech. Grp., supra* at 5-6 (reservation of a right to request, rather than receive, a price adjustment was not an exception to solicitation’s fixed-price requirements); *Language Servs. Assocs., Inc.*, B-297392, Jan. 17, 2006, 2006 CPD ¶ 20 at 10 n.10 (statement reserving right to negotiate equitable adjustment was not exception to solicitation’s fixed-price term); *Jantec, Inc.*, B-292668, B-292668.2, Nov. 6, 2003, 2003 CPD ¶ 222 at 9-10 (statement that “we would ask the Government to consider this extra cost” was not an exception to the solicitation’s fixed-price term). Accordingly, this protest allegation is denied.

Improper Evaluation of the Transition Plan

With respect to the transition plan area under the technical factor, Magellan argues that the agency “eliminated Magellan’s technical superiority over SRI under this subfactor by impermissibly evaluating proposals on a pass/fail basis.” Protest at 21. The protester asserts that the solicitation identified technical/risk ratings to be assigned to proposals based on how well they met the technical factor requirements but that this evaluation approach was “thrown out the window.” *Id.* at 23. In this regard, the protester contends that that the agency’s evaluation of Magellan’s transition plan as “[m]eets requirements” failed to accurately capture Magellan’s “seamless, no cost transition” worthy of “significant advantages” over the awardee. *Id.*

The agency argues that the transition plan was not a subfactor that would be separately assigned a technical/risk rating but rather was “an area considered” under the technical factor and not separately weighted. COS/MOL at 28; Supp. COS/MOL at 22. In this regard, the agency explained it found no “particular benefit” of Magellan’s transition plan that warranted the assignment of a strength. COS/MOL at 29. The agency also notes that it conducted a “comprehensive evaluation” of Magellan’s transition plan as part of the overall evaluation of the technical factor. Supp. COS/MOL at 22-23.

As relevant to this protest ground, under transition plan, offerors were required to “provide a Transition Plan for all tasks to meet the requirements of the PWS that describes the transition from the incumbent contractor; the approach for recruiting, hiring, and onboarding qualified personnel in a short period of time; milestones (in proper sequential order); new hire orientation processes; and demonstrate how

performance and technical risk will be mitigated.” TOEP at 6. In its evaluation, the agency found that the protester demonstrated an “understanding of the requirements through providing a complete, feasible approach.” AR, Tab 45, Magellan Tech. Eval. at 12.

Based on our review of the record, we see no basis to question the agency’s evaluation of Magellan’s transition plan. The agency correctly states that the transition plan was not a separate evaluation subfactor and as a result, there was no requirement to assign it a separate rating. Thus, Magellan’s argument that the agency failed to evaluate the transition plan as a separate subfactor that warranted an assigned technical/risk rating is inconsistent with the solicitation requirements. Moreover, based on our review, the record shows that the agency considered Magellan’s understanding and feasibility of its transition plan approach and reasonably determined that it met the requirements and did not otherwise warrant any strengths or significant strengths.¹⁰ See Supp. COS/MOL at 22-23; AR, Tab 45, Magellan Tech. Eval. at 12; AR, Tab 50, TODD at 6. Accordingly, we deny this protest ground.

Unreasonable Weakness Assessed to Magellan’s Proposal

Magellan challenges the Army’s assignment of a weakness for the labor category Magellan proposed to fulfill the administrative assistant positions. Protest at 11-14. As relevant to this protest ground, under staffing approach, the solicitation required offerors to explain their staffing methodology and staffing approach. TOEP at 4. In part, offerors were to describe their labor mix and “explain why the particular labor categories and mix were chosen and how those categories and mix are best suited to satisfy the requirements of the PWS.” *Id.* The solicitation further required that offerors “explain how the particular labor classification(s), as defined in the Department of Labor’s (DOL) [service contract labor standard (SCLS)] Directory of Occupations, is best suited to satisfy the requirements.”¹¹ *Id.*

¹⁰ In its comments on the agency report, the protester identifies for the first time specific aspects of Magellan’s proposed transition plan that it asserts “warranted consideration and assignment of strengths.” See Comments & Supp. Protest at 23. Our regulations do not contemplate the piecemeal presentation or development of protest issues through later submissions citing examples or providing alternate or more specific legal arguments missing from earlier general allegations of impropriety. *CORMAC Corp.*, B-421532, B-421532.2, June 14, 2023, 2023 CPD ¶ 142 at 4-5 n.8. We will dismiss a protester’s piecemeal presentation of arguments that could have been raised earlier in the protest process. *Id.* Here, the protester’s arguments regarding these specific aspects of its transition plan could have been raised in its initial protest. Accordingly, we dismiss these arguments as piecemeal presentation of protest grounds.

¹¹ In this regard, the FAR states:

[41 U.S.C. § 67](#), Service Contract Labor Standards, provides for minimum wages and fringe benefits as well as other conditions of work under

(continued...)

With respect to the administrative assistant positions, the PWS stated that these positions “shall possess” either an associate degree or a minimum of 10 years of prior military service with experience providing administrative support. PWS at 12. The PWS further explained that the “administrative assistant supports the [performance center managers (PCM)] to accomplish all administrative, coordination, training, and logistics functions.” *Id.* Administrative assistants are “typically responsible for ordering and receiving any supplies, property accountability, assisting with travel, and training management functions as directed by the PCM.” *Id.*

Magellan proposed the SCLS position of general clerk II for the administrative assistant positions identified in the solicitation. AR, Tab 41, Magellan Proposal at 16. In its evaluation the agency identified this as a weakness and explained that the description of the general clerk II labor category in the DOL directory of occupations stated that the position “requires familiarity with the terminology of the office unit” and that the general clerk “selects appropriate methods from a wide variety of procedures or makes simple adaptations and interpretations of a limited number of guides and manuals.” AR, Tab 45, Magellan Tech. Eval. at 11. The agency further noted that the description explained that the “clerical steps often vary in type or sequence, depending on the task” and that “[r]ecognized problems are referred to others.” Based on this description, the agency concluded that the general clerk II position “does not meet the scope of duties and responsibilities described in the PWS for the [a]dministrative [a]ssistant position” and identified this as a weakness in Magellan’s proposal. *Id.*

The protester argues that this weakness is unreasonable, and the agency applied unstated evaluation criteria because the solicitation did not expressly require the position to accomplish all administrative, coordination, training, and logistics functions. Protest at 11-12. In this regard, the protester asserts that the PWS “only used the word ‘shall’ in detailing the education or years of experience required for the [a]dministrative [a]ssistant but **did not** use ‘shall’ in discussing the tasks associated with that job.” Protest at 12; see PWS at 12. Magellan maintains that for other labor categories, the RFP expressly used the term “shall” in describing the tasks each labor category would perform, and the absence of the word “shall” in describing the tasks for the administrative assistant position means the duties were not mandatory and as a result, the agency unreasonably assigned it a proposal weakness. Protest at 11-12. Further, the protester claims that this error prejudiced Magellan as it would have received a rating of outstanding given its strong “technical proposal for which the agency identified multiple strengths.” Protest at 14; See AR, Tab 50, TODD at 6.

certain types of service contracts. Whether or not the Service Contract Labor Standards statute applies to a specific service contract will be determined by the definitions and exceptions given in the Service Contract Labor Standards statute, or implementing regulations.

FAR 37.107.

As stated, where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a reasonable manner. *Alluviam LLC*, B-297280, *supra*. As a general matter, when evaluating proposals in a task order competition, an agency properly may take into account specific, albeit not expressly identified, matters that are logically encompassed by, or related to, the stated evaluation criteria. *Beshenich Muir & Assocs., LLC*, B-421178, Jan. 6, 2023, 2023 CPD ¶ 16 at 5; *M.A. Mortenson Co.*, B-413714, Dec. 9, 2016, 2016 CPD ¶ 361 at 5. A protester's disagreement with an agency's judgment in evaluating proposals is insufficient to establish that the agency acted unreasonably. *VT Griffin Servs., Inc.*, *supra*.

Based on our review of the record, we find no basis to object to the assessment of the weakness here. The agency reasonably determined that the description of the general clerk II labor category did not meet the description of the tasks to be performed by the administrative assistant. In this regard, the administrative assistant position required support for, among other things, accomplishing all administrative, coordination, training, and logistics functions. In contrast, the general clerk II description merely stated that the position selects appropriate methods from a variety of procedures or makes simple adaptations and interpretations of guides and manuals. Moreover, we disagree with the protester's position that the solicitation had to include the word "shall" in order for the agency to reasonably consider whether the proposed general clerk II labor category encompassed the tasks the administrative assistant would perform. We therefore find that the assessment of whether the description of the proposed labor category met the expected tasks of the solicitation labor category was reasonably encompassed in the agency's evaluation of the proposed labor categories. This protest ground is denied.

Unequal Treatment – Significant Strengths for SRI

Magellan argues that the agency evaluated proposals unequally because the Army assigned a significant strength to SRI's proposal for its proposed PMO SME but assigned only a strength to Magellan's proposal despite qualifications of its own proposed PMO SME that "match (if not exceed) those of SRI's" proposed PMO SME. Comments & Supp. Protest at 5. As relevant here, the solicitation provided:

The PMO SME shall, at a minimum, possess a Master's degree from an accredited college or university in the field of Psychology, Counseling Psychology, Counseling Education, Coaching Education, or Kinesiology with specialized emphasis in sport and/or performance psychology[.] Preferred qualifications include certifications or memberships within a professional association related to their field of study such as the Association for Applied Sports Psychology (AASP), Certified Mental Performance Consultant (CMPC) or American Board of Sport Psychology (ABSP). The PMO SME shall have a minimum three years' experience teaching, coaching, or instructing resilience and performance enhancement skills, philosophies, and competencies. The PMO SME shall provide input for all training development, implementation,

evaluation, and redesign. The PMO SME shall be capable of briefing and advising DPRR HQ on the delivery of resilience and performance enhancement as it relates to current and planned curriculum and programs.

PWS at 11.

In its evaluation, the agency identified a strength in Magellan's proposal for its PMO SME who was noted as the "the academic authority on the task order [who] is highly qualified and experienced." AR, Tab 45, Magellan Tech. Eval at 7. By comparison, the agency identified a significant strength in SRI's proposal for finding its PMO SME is the academic authority on the task order with education, experience and certifications that are "appreciably advantageous to the Government."¹² AR, Tab 47a, SRI Tech. Eval. at 11.

The protester lists several qualifications of its proposed PMO SME as evidence of its superior qualifications-- *e.g.*, that the individual possessed a doctorate in [DELETED] with a specialization in [DELETED], held multiple of the "RFP's preferred certification and membership qualifications" and had "14 years' experience of highly relevant [DELETED] experience." Comments & Supp. Protest at 6-7; see AR, Tab 41, Magellan Proposal at 32. Magellan compares this to the qualifications of SRI's proposed PMO SME-- *e.g.*, the individual possessed a doctorate in [DELETED] with specialization in [DELETED], had 14 years of experience, served as a mental performance specialist for the [DELETED] and is director of high performance at [DELETED]. *Id.* at 6. The protester contends that its PMO SME was "significantly more qualified" and "worthier of [s]ignificant [s]trength credit." *Id.* at 7. Magellan argues that the agency unreasonably engaged in unequal treatment, where the agency assigned SRI a higher strength rating, despite its PMO SME's superior qualifications. *Id.*

In response, the agency explains that differences in the offerors' proposed personnel resumes warranted the different assignment of strengths. Supp. COS/MOL at 9. In this regard, the agency argues that the primary distinction in the evaluation stemmed from differences between proposed personnel qualifications related to memberships and certifications. *Id.* at 12. In particular, the Army noted that Magellan proposed a PMO SME that held

memberships in the American Psychological Association . . . and the International Positive Psychology Association. . . an aspect of the Offeror's proposal that has merit in a way that is advantageous to the Government

¹² The RFP defines a significant strength as "[a]n aspect of an Offeror's proposal that has appreciable merit or appreciably exceeds specified performance or capability requirements in a way that will be appreciably advantageous to the Government during task order performance" and a strength as "[a]n aspect of an Offeror's proposal that has merit or exceeds specified performance or capability requirements in a way that will be advantageous to the Government during task order performance." TOEP at 10.

during task order performance because the individual acting as the academic authority on the task order is highly qualified and experienced, which increases the likelihood of successful task order performance.

Id. at 10 (emphasis omitted) (quoting AR, Tab 45, Magellan Tech. Eval. at 10-11).

In this regard, the agency notes that while Magellan's proposed PMO SME's professional memberships are impressive, these professional organizations are based on personal and professional interests, professional networking, and continuing education. The agency argues those memberships are distinguishable from certifications, which indicate a "demonstrated proficiency" whereby individuals must "prove to the certifying body" demonstrated skills and undergo regular evaluation to be maintained. See Supp. COS/MOL at 11-12; AR, Tab 1d, Supp. Decl. of Technical Factor Chair at 4. As such, the agency assigned SRI a significant strength because it proposed a PMO SME who was an AASP certified mental performance consultant and a professional certified coach who "is the academic authority on this task order." Supp. COS/MOL at 11. Lastly, the agency found that SRI's PMO SME demonstrated "education, experience and certifications" that was "appreciably advantageous." *Id.* (emphasis omitted). In summary, the agency concluded that this certification offered a significant benefit which justified assignment of a significant strength.

A contracting agency must treat all competitors equally and evaluate their offers evenhandedly against the solicitation's requirements and evaluation criteria. *Will Tech., Inc.; Paragon TEC, Inc.*, B-413139.4 *et al.*, June 11, 2018, 2018 CPD ¶ 209 at 15. Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the offerors' proposals. *Biswas Info. Tech. Sols., Inc.*, B-413104.35, B-413104.38, Apr. 18, 2019, 2019 CPD ¶ 163 at 7.

On this record, we find that the agency reasonably distinguished between the offerors' proposed PMO SME qualifications, differentiating between memberships which denote belonging and networking, and certifications that demonstrate an individual has met certain standards and possesses expertise. While the solicitation did not expressly identify a preference for certifications over memberships, an agency may consider what is reasonably encompassed within the solicitation's stated criteria. See *Beshenich Muir & Assocs., LLC, supra*. Here, the agency concluded that the protester's proposed PMO SME merited a strength but did not have certifications warranting a significant strength, a conclusion that, as discussed above, the protester has not shown to be unreasonable. The record shows that the differences in the agency's evaluation stemmed from differences in the qualifications of the proposed PMO SME and as such does not constitute impermissible unequal treatment. As a result, this protest ground is denied.

Failure to Assign Significant Strengths and Strengths

The protester alleges that the agency failed to assign significant strengths or strengths to multiple aspects of Magellan's proposal under the technical factor; in this regard, the

protester provided excerpts from both the solicitation requirements and its proposal to support its claim. See Protest at 15-18; Comments & Supp. Protest at 5-7. We have reviewed the protester's arguments and find that the agency reasonably evaluated Magellan's proposal and explained why it did not assess a significant strength or strength for various aspects of protester's proposal. Below we discuss a representative sample of Magellan's arguments.

As noted, our Office will not reevaluate proposals but will instead examine the record to determine whether the agency's judgment was reasonable and consistent with solicitation criteria. *Technology Concepts & Design, Inc., supra*. A protester's disagreement with an agency's judgment in evaluating proposals is insufficient to establish that the agency acted unreasonably. *VT Griffin Servs., Inc., supra*. An agency's judgment that the features identified in a proposal did not significantly exceed the requirements of the solicitation--and thus did not warrant the assessment of unique strengths--is a matter within an agency's discretion and one that we will not disturb where the protester has failed to demonstrate that the evaluation was unreasonable. *Protection Strategies, Inc.*, B-416635, Nov. 1, 2018, 2019 CPD ¶ 33 at 8 n.4. In this regard, an agency's contemporaneous evaluation record is not required to "prove a negative," or document determinations of adequacy (*i.e.*, why a proposal did not receive a strength or weakness). See *BillSmart Sols., LLC, supra* at 14 n.19.

Curriculum Development

Under the technical approach area of the technical factor, the solicitation required that offerors explain how they planned to perform the following tasks: (1) curriculum development, distance learning products and warrior care transition program support; (2) training requests; and (3) professional development and instructor training. TOEP at 3-4. In this regard, the RFP required offerors to describe an approach "to performing curriculum development activities, to include project management, milestone development and tracking, application of industry standards, research methodology, quality control, and use of multi-media sources, and methods for assessing curricula effectiveness." *Id.* at 3. Further, the PWS required the contractor to "use[] the [instructional systems design (ISD)/analysis, design, develop, implement, and evaluate (ADDIE)] model/process and [Department of Defense]/Army curriculum development standards" and "manage the five phases of curriculum development [in accordance with] with industry standards and applicable regulations." AR, Tab 1b, Decl. of Technical Factor Chair at 5 (emphasis omitted); PWS at 27-28.

The protester contends it should have received a strength for its unparalleled approach to "implementing the [ISD/ADDIE] model for curriculum development based largely on its successful incumbent performance and deep institutional knowledge of the Army's MRT/[J]TCS needs." Protest at 16. The protester argues its proposed curriculum development approach exceeded solicitation criteria because it provided, in part to "complete a comprehensive curriculum analysis to facilitate efficient and effective Design and Development phases" and to engage in "[DELETED]" to "identify the best solutions for each DPRR MRT/TCS request" and "implement the newly designed

curriculum using its unique '[DELETED]' to ensure uniformity for training of MRT[/performance expert]s across all regions." Comments & Supp. Protest at 18.

The agency contends that Magellan's approach met the stated requirements but did not merit additional credit. COS/MOL at 22-24; AR, Tab 45, Magellan Tech. Eval. at 8; Tab 1b, Decl. of Technical Factor Chair at 5. The agency maintains that Magellan's proposal "explained an acceptable approach to curriculum development, in line with the PWS requirements, but there was nothing that particularly stood out as unique or different from processes that the Government outlined." AR, Tab 1b, Supp. Decl. of Technical Factor Chair at 5.

Based on our review of the record, we find the agency reasonably explained why it did not assess a strength for the protester's curriculum development. The solicitation defined a strength as an aspect of the proposal that has merit or exceeds specified performance or capability requirements that may be beneficial to the government. See TOEP at 10. The excerpts of its proposal cited by Magellan do not clearly demonstrate that it proposed to exceed rather than simply meet the minimum solicitation criteria. For example, the protester cites its engagement in "[DELETED]" and its [DELETED] but does not otherwise explain how these aspects of its approach exceed the RFP's requirements for training requests, professional development and instructor training. See *id.* at 3-4; Protest at 16; Comments & Supp. Protest at 18. While Magellan disagrees, it has not demonstrated that the agency's evaluation was unreasonable or inconsistent with the terms of the solicitation. On this record, these arguments amount to nothing more than disagreement with the agency's judgment and do not provide a basis to conclude the agency's evaluation was unreasonable. See *VT Griffin Servs., Inc., supra*. This protest ground is denied.

Management Process - Quality Control Plan

Under the management approach area of the technical factor, the solicitation required as follows:

The Offeror's proposal shall provide clearly defined management and organization processes and procedures that ensure that the Offeror can meet the stated performance objectives of the [t]ask [o]rder. If the TO [task order] has more than one place of performance, the Offeror shall clearly describe how they intend to manage a dispersed workforce located at various locations CONUS [continental United States] and OCONUS [outside the continental United States] to ensure standardization and uninterrupted, high-quality services, to include a description of what technology/tools will be used to ensure communication with and between its workforce at various locations. The Offeror shall address timely identification and resolution of issues; and their intended inspection methodology to validate this approach and include their approach for inspection as the TO includes multiple locations. The Offeror shall describe in detail its training plan, including

training of new hires as well as sustainment training and professional development throughout the life of the TO. The Offeror shall thoroughly describe its approach to ensure uninterrupted services through employee turnover and personnel absence (including both planned and unplanned vacation or medical leaves). The Offeror shall include a detailed organizational chart with clear lines of authority depicted.

TOEP at 5.

Magellan argues that while the agency assigned one strength for its dispersed workforce, the agency failed to assign a separate significant strength or strength for its quality control plan (QCP). Protest at 18; Comments & Supp. Protest at 20-21. Magellan explains it provided a “detailed, [DELETED]-part QCP with comprehensive narratives demonstrating [its] decentralized inspection approach” and would “[DELETED],” among other services. Protest at 18 (quoting Tab 41, Magellan Proposal at 22). Magellan argues that its QCP proposed to provide “[DELETED]” and [DELETED]. Comments & Supp. Protest at 20-21. Magellan further argues that its proposed quality controls should have been credited with an additional strength under the management process area. *Id.* at 21. The agency responds that one aspect of Magellan’s approach to management of a dispersed workforce warranted the assignment of a strength. Supp. COS/MOL at 25.

On this record, we have no basis to object to the evaluation. The record shows that the agency reviewed all aspects of Magellan’s management process and determined that it warranted a strength for its management of dispersed workforce. See Tab 45, Magellan Tech. Eval. at 12. The protester provided excerpts from its proposal to demonstrate features that it believed deserved strengths but did not sufficiently explain why these features exceeded the requirements in a manner that will be beneficial to the agency. Thus, it is reasonable for the agency to conclude that Magellan’s QCP did not merit assignment of a unique strength, which as noted above, is a matter within an agency’s discretion and one that we will not disturb where the protester has failed to demonstrate that the evaluation was unreasonable. *Protection Strategies, Inc., supra*. Magellan’s disagreement with the agency’s judgment, by itself, is not sufficient to establish that the agency acted unreasonably, thus we find no basis to sustain this ground. *VT Griffin Servs., Inc., supra*. Accordingly, this protest ground is denied.

Best-Value Determination

Finally, Magellan alleges that the agency's flawed evaluation resulted in an inherently flawed award decision. See Protest at 23; Comments & Supp. Protest at 24; Supp. Comments at 15. These allegations are entirely derivative of the protester's other challenges to the agency's evaluation, all of which we have denied as set forth above. See *Advanced Alliant Solutions Team, LLC*, B-417334, Apr. 10, 2019, 2019 CPD ¶ 144 at 6. Therefore, this protest ground is also denied.

The protest is dismissed in part and denied in part.

Edda Emmanuelli Perez
General Counsel