



**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:** Millennium Engineering and Integration Company

**File:** B-417359.4; B-417359.5

**Date:** December 3, 2019

---

Paul F. McQuade, Esq., Daniel D. Straus, Esq., and Danielle K. Muenzfeld, Esq., Greenberg Traurig LLP, for the protester.  
Daniel R. Forman, Esq., and James G. Peyster, Esq., Crowell & Moring LLP, for ARES Technical Services Corporation, the intervenor.  
Alexander T. Bakos, Esq., Louis T. Shernisky, Esq., and Timothy M. Bass, Esq., National Aeronautics and Space Administration, for the agency.  
Louis A. Chiarella, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

## DIGEST

1. Protest that the agency engaged in misleading discussions with the protester is dismissed as untimely where the agency had informed offerors that its earlier corrective action would not involve engaging in further discussions, or permitting the submission of revised proposals, and the protester failed to timely challenge the grounds rules of the procurement.
  2. Protest challenging the agency's evaluation of the awardee's past performance is denied where the protester fails to demonstrate that it suffered any competitive prejudice from the alleged error.
  3. Protest challenging the agency's evaluation of awardee's compensation plan is denied where it was reasonable and consistent with the stated evaluation criteria.
  4. Protest challenging the agency's best-value tradeoff determination is denied where the decision was reasonable, consistent with the stated evaluation criteria, and adequately documented as to why the awardee's proposal represented the overall best value to the government.
- 

## DECISION

Millennium Engineering and Integration Company, of Arlington, Virginia, protests the award of a contract to ARES Technical Services Corporation, of Columbia, Maryland,

under request for proposals (RFP) No. 80KSC018R0006, issued by the National Aeronautics and Space Administration (NASA), Kennedy Space Center, for engineering and management services, referred to as the “Kennedy Exploration Ground Systems Program Support Services” (KLXS III) procurement. Millennium contends that NASA’s award decision was flawed because the agency engaged in misleading discussions with the protester. Millennium also argues the agency’s evaluation of ARES’ proposal and resulting award decision were improper.

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

## BACKGROUND

The Kennedy Space Center is NASA’s primary launch center for human spaceflight. The Exploration Ground Systems (EGS) program, one of three NASA programs based at the Kennedy Space Center, is responsible for developing the necessary ground systems infrastructure to support the assembly, test, launch, and recovery functions for NASA’s Space Launch Systems and Multi-Purpose Crew Vehicle programs. The purpose of the KLXS III procurement is to acquire support services for the EGS program in the areas of ground systems and space flight systems planning and design; project management and integration; operations integration and analysis; technical requirements development, management, and compliance; and cost, risk, and schedule integration and analysis. Contracting Officer’s Statement (COS) at 6; Agency Report (AR), Tab 3, RFP, Performance Work Statement (PWS) at 650.<sup>1</sup>

The RFP was issued on April 13, 2018, pursuant to the procedures of Federal Acquisition Regulation (FAR) part 15.<sup>2</sup> RFP at 488. The solicitation contemplated the award of a cost-plus-fixed-fee (CPFF), level-of-effort contract for a 20-month base period with one 2-year option and four 1-year options.<sup>3</sup> RFP at 504-505; COS at 6-7. In general terms, the contractor was to provide qualified personnel to successfully perform the PWS requirements in six specified areas: (1) general contract requirements; (2) program management; (3) logistics management and integration; (4) systems engineering and integration; (5) operations and test management; and (6) project management and project integration. PWS at 648.

The RFP established that the agency would make award on a best-value tradeoff basis, based on three evaluation factors in descending order of importance: mission suitability, past performance, and cost. RFP at 638. The mission suitability factor would

---

<sup>1</sup> References to page numbers throughout the decision are to the sequential numbering provided by the contracting agency in its report to our Office.

<sup>2</sup> The RFP was amended five times. Unless specified otherwise, all citations are to the final, conformed version of the solicitation.

<sup>3</sup> The RFP also included an indefinite-delivery, indefinite quantity (IDIQ) ordering component. COS at 6; RFP at 505.

be weighted and scored on a 1,000-point scale, with each subfactor weighted as follows: management approach (500), technical approach (400), and small business utilization (100). RFP at 639. The mission suitability and past performance factors, when combined, were significantly more important than cost. RFP at 638.

With respect to cost, the RFP provided offerors with the specific labor categories and labor hours for each contract performance period. RFP attach. J-08, Core Effort Labor Hours at 856. The RFP also specified the experience, skills, and description for each labor category. RFP attach. L-05, Government Standard Labor Categories at 1236-1249. In total, offerors were required to propose 1,270,464 labor hours for the CPFF effort, and 345,527 hours for the IDIQ effort, in 31 labor categories. RFP attach. J-08, Core Effort Labor Hours at 856; attach. L-04b, Basic Cost Template at 985.

### Initial Evaluation and Protest

Seven offerors, including ARES and Millennium, the incumbent, submitted proposals by the June 4 closing date. An agency source evaluation board (SEB) evaluated offerors' mission suitability proposals using both point scores and an adjectival rating scheme (excellent, very good, good, fair, and poor). Past performance was evaluated using the following "level of confidence" adjectival rating scheme: very high, high, moderate, low, very low, and neutral. RFP at 639-644; COS at 18-19, 21-23. Offerors' costs were not rated but assessed for reasonableness and realism. RFP at 643.

On November 8, after completing the evaluation of offerors' initial proposals, the agency established a competitive range determination which included ARES and Millennium. The agency thereafter conducted written and oral discussions, and offerors submitted final proposal revisions (FPR) by December 12. On February 22, 2019, the agency announced contract award to LJT & Associates, Inc. COS at 68.

Three unsuccessful offerors, including Millennium, thereafter filed protests with our Office challenging the award to LJT. Millennium's protest alleged that the agency had engaged in misleading discussions regarding the protester's proposed direct labor rates. Protest, B-417359.2, Mar. 5, 2019, at 40-44. Millennium also argued the agency's evaluation of offerors' proposals and award decision were improper. Id. at 15-40, 44-53.

On April 3, the agency informed our Office that it intended to take corrective action by reconsidering its evaluation report and making a new award decision.<sup>4</sup> AR, Tab 25, Agency Notice of Corrective Action. We then dismissed Millennium's March 5 protest as academic. Millennium Eng'g & Integration Co., B-417359.2, Apr. 3, 2019 (unpublished decision).

---

<sup>4</sup> NASA first provided notice of its corrective action on March 28, and subsequently on April 3 clarified the agency would also continue to suspend contract performance while implementing its corrective action.

## Reevaluation and Second Award Decision

The SEB reevaluated offerors' FPRs, with the final evaluation ratings and costs of proposals from ARES and Millennium as follows:

	<b>ARES</b>	<b>Millennium</b>
<b>Mission Suitability</b>		
<b>Management Approach (500)</b>	330/Good	305/Good
<b>Technical Approach (400)</b>	248/Good	240/Good
<b>Small Business Utilization (100)</b>	98/Excellent	98/Excellent
<b>Overall (1,000)</b>	676	643
<b>Past Performance (Confidence Level)</b>	High	Very High
<b>Proposed Cost</b>	\$115,285,233	\$ 130,897,183
<b>Evaluated Cost</b>	\$115,285,233	\$ 130,897,183

AR, Tab 17, Source Selection Authority (SSA) Presentation at 6924, 6926.

The agency evaluators identified strengths and weaknesses in the offerors' mission suitability proposals in support of the evaluation scores. AR, Tab 14, ARES SEB Report at 6683-6684, 6689-91; COS at 66. The evaluators also made narrative findings in support of the assigned past performance ratings and evaluated costs. AR, Tab 13, ARES Past Performance Evaluation Report at 6637-6674; Tab 14, ARES Cost Evaluation Report at 6711-6730.

On July 31, the SSA received and reviewed the evaluation findings. AR, Tab 17, Source Selection Decision Document (SSDD) at 6941. The SSA thereafter determined that ARES' advantage under the mission suitability factor, and lower cost, outweighed Millennium's past performance advantage, and concluded that ARES' proposal represented the overall best value to the government. Id. at 6957-6958.

On August 13, NASA provided Millennium with notice of contract award to ARES. Millennium received a debriefing from the agency on August 21, and filed this protest on August 26.

## DISCUSSION

Millennium raises various challenges to the award to ARES. First, the protester argues that the agency engaged in misleading discussions with Millennium regarding its initial direct labor rates. Second, Millennium contends that NASA's evaluation of ARES' proposal was unreasonable under the past performance, mission suitability, and cost evaluation factors. Lastly, Millennium asserts the agency's best-value tradeoff determination was flawed. Millennium argues that had the agency performed a proper evaluation and/or award determination, it would have been selected for award. As discussed below, we find Millennium's arguments concerning misleading discussions to be untimely, and the remaining arguments to be without merit. Although we do not

address every argument raised by the protester, we have considered them all and find no basis on which to sustain the protest.<sup>5</sup>

#### Agency Discussions with Millennium

Millennium argues (again) that the agency conducted misleading discussions with it regarding the offeror's proposed direct labor rates for various labor categories.<sup>6</sup> Millennium also contends the agency could not properly re-award this contract without holding additional discussions with it and/or allowing Millennium to submit a revised proposal. Protest at 39. Both the agency and intervenor argue that these contentions are untimely at this juncture because Millennium has long been on notice that the agency was not planning to hold discussions. Supp. Memorandum of Law, Nov. 22, 2019, at 1-3; ARES Supp. Comments, Nov. 22, 2019, at 1-4. We agree.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. Delta Risk, LLC, B-416420, Aug. 24, 2018, 2018 CPD ¶ 305 at 15. Pursuant to these rules, a protest based on alleged solicitation improprieties that are apparent prior to the deadline for submitting proposals must be filed before that deadline. 4 C.F.R. § 21.2(a)(1). We have also repeatedly found that a protest allegation challenging the ground rules that the agency has announced for performing corrective action and recompetition is analogous to a challenge to the terms of the solicitation, and must be filed prior to the deadline for submitting revised proposals. Delta Risk, LLC, supra; Northrop Grumman Info. Tech., Inc., B-400134.10, Aug. 18, 2009, 2009 CPD ¶ 167 at 10; Domain Name Alliance Registry, B-310803.2, Aug. 18, 2008, 2008 CPD ¶ 168 at 7. Where, as here, no further submissions are anticipated, such challenges must be

---

<sup>5</sup> For example, Millennium raised other challenges to the evaluation of offerors' proposals under the mission suitability factor and the past performance evaluation of ARES, Protest at 16-27, 32-36, but subsequently elected to withdraw these additional protest grounds. Millennium Comments, Oct. 10, 2019, at 1. Millennium also protested the cost realism evaluation of ARES with regard to the awardee's escalation rates. Supp. Protest and Comments at 24-27. We consider this argument abandoned, since the agency provided a detailed response to the protester's assertion in its report to our Office (Supp. MOL, Oct. 15, 2019, at 9-10), and Millennium elected not to reply to the agency's response in its comments (Millennium Supp. Comments, Oct. 22, 2019, *passim*). See Citrus College; KEI Pearson, Inc., B-293543 *et al.*, Apr. 9, 2004, 2004 CPD ¶ 104 at 8 n.4.

<sup>6</sup> Specifically, in connection with the labor rates identified as low, the agency stated "[r]evis[e] the proposal to provide additional rationale to support the appropriateness of the labor rates, or clarify." AR, Tab 10, NASA Discussions with Millennium at 3261. Millennium alleges these discussions contained an "unambiguous message" that it was required to raise its direct labor rates, and that it was "threatened" with an assigned weakness and upward cost adjustment if it failed to do so. Protest at 37; Supp. Protest & Comments at 14.

raised within 10 days of when the scope of the agency's corrective action was known or should have been known. 4 C.F.R. § 21.2(a)(1); Delta Risk, LLC, supra.

As described above, Millennium's earlier protest alleged, among other things, that the agency's discussions were misleading regarding its proposed direct labor rates. Protest, B-417359.2, Mar. 5, 2019, at 40-44. Millennium's earlier protest also made it clear that it believed that the remedy for this alleged impropriety was for the agency to conduct additional discussions with offerors or to permit offerors to again submit revised proposals. Id. at 43.

The agency thereafter decided to take corrective action in response to the protests filed by Millennium and two other unsuccessful offerors, and described the scope of its corrective action as follows: "NASA's Kennedy Space Center (KSC) will reconsider the report of the Source Evaluation Board and issue a new selection decision." AR, Tab 25, Agency Notice of Corrective Action. The contracting officer subsequently sent e-mails to each offeror in the competitive range, including Millennium, stating that:

The Government is performing corrective action related to the award of the KLXS III contract. The corrective action will include reevaluation of the previously submitted Final Proposal Revisions and a new Source Selection Decision. . . . Once corrective action is completed, your company will be informed.

AR, Tab 26, E-mail to Millennium, Apr. 4, 2019.

The record reflects no further communications with offerors until the August 13 award notice was made.

On this record, we think Millennium knew or should have known that the agency did not intend to hold additional discussions and/or permit the submission of revised proposals as part of its corrective action. First, the agency's corrective action notice makes no reference to conducting discussions, and nowhere mentions even the possibility that the agency will reopen discussions or seek any additional submissions. AR, Tab 25, Agency Notice of Corrective Action. Likewise, the contracting officer's e-mail, which also did not mention the possibility of discussions, stated the scope of the corrective action included only reevaluation and a new award decision.<sup>7</sup> AR, Tab 26, E-mail to Millennium, Apr. 4, 2019. The final sentence of the contracting officer's e-mail also

---

<sup>7</sup> Millennium argues that NASA's use of the word "include" in the e-mail here indicated the agency did not intend to limit the scope of its corrective action to only the described activities of reevaluating offerors' current proposals and making a new award decision. Millennium Supp. Comments, Nov. 22, 2019, at 4-5. To the extent Millennium believed the scope of the corrective action was ambiguous as to whether it would or would not include discussions, however, we think it was incumbent upon the protester to seek clarification of the matter, rather than wait until the agency completed its reevaluation.

highlighted that the next contact with offerors would be once the reevaluation process was done. Id. In sum, nothing in the agency's e-mail here, including its eventual silence, can be construed as accepting Millennium's view that further discussions and/or submissions were required before making a new selection decision.<sup>8</sup>

Under the circumstances here, we think it was unreasonable for Millennium to await the agency's second award decision without raising any challenge to the ground rules of the procurement as announced in the agency's notice of corrective action. Northrop Grumman Info. Tech., Inc., supra; Domain Name Alliance Registry, supra, at 8. Consequently, we conclude that the protester's allegations regarding the agency's decision not to hold additional discussions with Millennium, and to proceed with award to ARES without remedying the alleged misleading discussions, are now untimely and as a result, dismissed.<sup>9</sup>

#### Past Performance Evaluation of ARES

Millennium also challenges NASA's evaluation of ARES' past performance. The protester contends that the agency failed to reasonably assess ARES' past performance in accordance with the terms of the solicitation. Protest at 28-32.

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. BillSmart Solutions, LLC, B-413272.4, B-413272.5, Oct. 23, 2017, 2017 CPD ¶ 325 at 4; Jacobs Tech., Inc., B-413389, B-413389.2, Oct. 18, 2016, 2016 CPD ¶ 312 at 6. Where a protester challenges an agency's past performance evaluation, we will review the evaluation to determine if it

---

<sup>8</sup> We also find Millennium's reliance on our decision in Accenture Fed. Servs., LLC, B-414268.3 et al., May 30, 2017, 2017 CPD ¶ 175, to be misplaced. In Accenture, we found the protester's challenge to the agency's proposed corrective action to be premature because the agency expressly indicated that it had not ruled out the possibility that it might need to open discussions. Id. at 4. Here, by contrast, the agency made no representations that it may conduct discussions, and its actions instead clearly indicated that it did not contemplate holding discussions.

<sup>9</sup> In any event, we also find no merit to Millennium's misguided belief that the discussions here were misleading where the agency accurately conveyed to the protester the weakness identified by the evaluators, and left it to the offeror regarding how to respond. M7 Aerospace, LLC, B-415252.4, B-415252.5, Nov. 9, 2018, 2018 CPD ¶ 387 at 15; Academy Facilities Mgmt.--Advisory Opinion, B-401094.3, May 21, 2009, 2009 CPD ¶ 139 at 6. An agency's discussions are not misleading or coercive merely because an offeror makes an independent business judgment that it later regrets. CSC Gov't Sols. LLC, B-413064, B-413064.2, Aug. 10, 2016, 2016 CPD ¶ 347 at 10 n.8; McConnell Jones Lanier & Murphy, LLP, B-409681.3, B-409681.4, Oct. 21, 2015, 2015 CPD ¶ 341 at 6.

was reasonable and consistent with the solicitation's evaluation criteria and procurement statutes and regulations, and to ensure that the agency's rationale is adequately documented. DynCorp Int'l, LLC, B-412451, B-412451.2, Feb. 16, 2016, 2016 CPD ¶ 75 at 14; Falcon Envtl. Servs., Inc., B-402670, B-402670.2, July 6, 2010, 2010 CPD ¶ 160 at 7. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that an evaluation was improper. WingGate Travel, Inc., B-412921, July 1, 2016, 2016 CPD ¶179 at 4-5; Beretta USA Corp., B-406376.2, B-406376.3, July 12, 2013, 2013 CPD ¶186 at 10.

The RFP instructed offerors to submit past performance references describing their prior work on contracts which were similar in size, content, and complexity to the PWS requirements here. RFP at 632. The solicitation also established that the agency would evaluate the relevance and quality of an offeror's past performance, "in accordance with FAR 15.305(a)(2) and NFS [NASA FAR Supplement] 1815.305(a)(2)," in order to assess the government's confidence in the offeror's ability to successfully perform the solicitation requirements. RFP at 644.

As described earlier, NASA's past performance evaluation utilized a "level of confidence" adjectival rating scheme. Here, the high level of confidence rating was defined as follows:

The offeror's relevant past performance is highly pertinent to this acquisition; demonstrating very effective performance that would be fully responsive to contract requirements. Offeror's past performance indicates that contract requirements were accomplished in a timely, efficient, and economical manner for the most part, with only minor problems that had little identifiable effect on overall performance. Based on the offeror's performance record, there is a high level of confidence that the offeror will successfully perform the required effort. . . .

COS at 22; NFS § 1815.305(a)(2).

ARES' proposal included four past performance references. These were: (1) its subcontract work on the NASA launch and test range systems integrated support contract; (2) its subcontract work on the NASA mission and program integration contract; (3) its NASA Johnson Space Center multi-purpose crew vehicle program integration contract; and (4) its NASA Goddard Space Flight Center safety and mission assurance services contract. AR, Tab 11, ARES' FPR, Vol. V, Past Performance, at 4467-4487.

The SEB performed a detailed assessment of the quality and relevance of ARES' past performance references. AR, Tab 13, ARES Past Performance Evaluation Report at 6637-6674. The agency evaluators found ARES had received uniformly high quality ratings (e.g., "exceeded performance") on all references, and had demonstrated significantly relevant past performance with regard to five of the six PWS task areas, but not with regard to the project management and project integration task. Id. at 6672-

6674. Overall, the SEB concluded that “ARES’s past performance is highly pertinent to this acquisition and its performance on the cited contracts was assessed as exemplary,” and assigned a high level of confidence rating. Id. at 6673.

Millennium alleges the agency deviated from the solicitation requirements by assigning ARES a high level of confidence rating. The protester does not dispute the quality of ARES’ prior work, nor that ARES was found to possess relevant past performance with regard to five of six PWS tasks. Rather, Millennium contends that because ARES did not also demonstrate project management and project integration experience, the awardee’s prior work was not “fully responsive to contract requirements” as required by the high level of confidence rating definition. Protest at 31-32; MEI Comments, Oct. 10, 2019, at 2-5.

NASA and the intervenor argue that the agency’s past performance evaluation of ARES was reasonable and consistent with the stated evaluation criteria. The agency maintains that, in accordance with the “high level of confidence” definition, ARES’ relevant past performance was found “highly pertinent to this acquisition,” while that section of the rating definition requiring “demonstrating very effective performance that would be fully responsive to contract requirements” applied instead to the quality of an offeror’s prior work. MOL at 17; see also ARES Comments, Oct. 11, 2019, at 8-9 (asserting that Millennium’s interpretation is at odds with the plain language of the rating definition and, even if reasonable, would result in a patent ambiguity). As the awardee’s references were found to be of high quality and relevant to all but one PWS task, the agency argues, it was proper to rate ARES’ past performance as having a high level of confidence.

Millennium protests the evaluation rating assigned to ARES’ past performance. The protester essentially challenges the agency’s interpretation of the RFP’s “high level of confidence” rating definition, and asserts that its interpretation should be the controlling one. We need not decide, however, whether Millennium’s interpretation of the “high level of confidence” rating is reasonable, because Millennium has failed to demonstrate that it was prejudiced by the rating assigned to ARES’ past performance.

Competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency’s actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest. Catalyst Sols., LLC, B-416804.3, B-416804.4, Apr. 4, 2019, 2019 CPD ¶ 134 at 5; WingGate Travel, Inc., supra, at 9; see Statistica, Inc. v. Christopher, 102 F.3d 1577 (Fed. Cir. 1996).

Here, the record reflects that the SSA, when making his award decision, considered not only the rating assigned to ARES’ past performance but also what that rating was based upon—exemplary performance in all PWS areas other project management and project integration task. AR, Tab 17, SSDD, at 6947-6948. We have repeatedly found that ratings, be they numerical, color, or adjectival, are merely a guide to, and not a substitute for, intelligent decision making in the procurement process. See, e.g., NCI

Info. Sys., Inc., B-412680, B-412680.2, May 5, 2016, 2016 CPD ¶ 125 at 9 ; Science Applications Int'l Corp., B-407105, B-407105.2, Nov. 1, 2012, 2012 CPD ¶ 310 at 9. The germane consideration is instead whether the record shows that the agency fully considered the actual qualitative differences in offerors' proposals. InfoZen, Inc., B-408234 et al., July 23, 2013, 2013 CPD ¶ 211 at 8. The record likewise demonstrates that the SSA's consideration of Millennium's past performance was on the underlying findings--exemplary performance in all PWS areas, including the project management and project integration task. AR, Tab 17, SSDD at 6948.

The SSA also reasonably considered the size of the PWS task where ARES lacked relevant past performance: "I note that PWS 6.0, while important to the Program, accounts for approximately 71,000 of the approximately 1.2 million hours allocated to the contract base." Id. at 6957. The SSA ultimately concluded that although "confidant that both [ARES and Millennium] could successfully perform the KLXS II[I] requirement," Millennium possessed an advantage under the past performance factor. Id. In sum, contrary to Millennium's misplaced fixation on the assigned adjectival rating, the SSA properly and reasonably focused on the underlying attributes and merits of ARES' past performance when making his award decision. Therefore, this allegation is denied.

#### Evaluation of ARES' Total Compensation Plan

Millennium challenges the evaluation of ARES' total compensation plan (TCP). The protester contends that the agency's evaluation here was unreasonable, inconsistent with the terms of the solicitation, and inadequately documented. Supp. Protest and Comments at 3-12.

In reviewing a protest challenging the agency's evaluation of proposals, our Office will not reevaluate proposals nor substitute our judgment for that of the agency regarding a proposal's relative merits, as the evaluation of proposals is a matter within the agency's discretion. Peraton, Inc., B-417088, B-417088.2, Feb. 6, 2019, 2019 CPD ¶ 190 at 5; Del-Jen Educ. & Training Group/Fluor Fed. Solutions LLC, B-406897.3, May 28, 2014, 2014 CPD ¶ 166 at 8. Rather, we will review the record to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations, and adequately documented. Management Sys. Int'l, Inc., B-409415, B-409415.2, Apr. 2, 2014, 2014 CPD ¶ 117 at 5; Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. A protester's disagreement with the agency's evaluation judgments, without more, is insufficient to establish that an evaluation was improper or lacked a reasonable basis. Lanmark Tech., Inc., B-408892, Dec. 19, 2013, 2013 CPD ¶ 295 at 5.

As set forth above, the mission suitability factor consisted of three subfactors. RFP at 639. Under the management approach subfactor, the agency was to evaluate the

offeror's approach in five areas, including TCPs.<sup>10</sup> Id. at 639-641. The RFP also established that "[t]he Offeror's Total Compensation Plan for all positions will be evaluated in accordance with FAR § 52.222-46, Evaluation of Compensation for Professional Employees, and for the feasibility and effectiveness in recruiting, retaining qualified personnel, and capturing incumbent personnel as it relates to compensation." Id. at 641.

Section 52.222-46 of the FAR calls for a cost evaluation of each offeror's compensation plan that considers the realism of the professional compensation proposed as well as its impact on recruiting and retention and its consistency with the total plan for compensation. FAR § 52.222-46(a). In conducting such a cost realism analysis, an agency is not required to conduct an in-depth cost analysis, or to verify each and every item in assessing cost realism; rather, the evaluation requires the exercise of informed judgment by the contracting agency. Target Media Mid Atlantic, Inc., B-412468.8, June 27, 2017, 2017 CPD ¶ 208 at 5. Additionally, an agency's cost realism analysis need not achieve scientific certainty; rather, the methodology employed must be reasonable and realistic in view of other cost information reasonably available to the agency as of the time of its evaluation. CSI, Inc.; Visual Awareness Techs. & Consulting, Inc., B-407332.5 et al., Jan. 12, 2015, 2015 CPD ¶ 35 at 6. Our review of an agency's cost realism evaluation is limited to determining whether the cost analysis is reasonably based and not arbitrary. Jacobs COGEMA, LLC, B-290125.2, B-290125.3, Dec. 18, 2002, 2003 CPD ¶ 16 at 26.

ARES, as part of its management approach, proposed to capture 94 percent of the incumbent personnel as part of the KLXS III contract. AR, Tab 14, ARES SEB Report at 6680; COS at 37. The agency initially assigned a significant weakness to ARES' proposed TCP, finding it to be insufficient to achieve the proposed incumbent capture rate. AR, Tab 14, ARES SEB Report at 6680-6681. NASA raised this issue in discussions with ARES, and considered the issue resolved when ARES "increased its labor rates to be sufficient to capture its proposed incumbent capture rate." Id. at 6682.

The agency, as part of its evaluation of offerors' TCPs, employed multiple data sources and evaluation tools. Supp. COS at 4. First, the agency developed a "composite rate tool," which was a weighted average derived from the direct labor rates of Millennium and its subcontractors under the incumbent KLXS II contract.<sup>11</sup> Id. at 5-7. The agency also created a "TCP tool," to determine whether an offeror's proposed direct labor rate was internally consistent with the offeror's proposed salary range for a particular

---

<sup>10</sup> The other four areas within the management approach subfactor--program management, key positions and key personnel, organizational structure and corporate resources, and phase-in plan--are not the subject of protest.

<sup>11</sup> The record reflects that some of the 31 labor categories required by the RFP here were not part of the incumbent KLXS II contract. Id. at 6-7. Consequently, the agency's composite rate tool could not be applied in all instances.

position. Id. at 7-8. The agency also created a “low rate tool,” to compare an offeror’s proposed direct labor rates to the incumbent composite rates. Id. at 9-12. Lastly, the agency employed a “PCA (probable cost adjustment) tool,” which incorporated any necessary PCAs to the offeror’s proposed cost to “quantify any resource realism concerns” associated with the agency’s TCP findings. Id. at 12-13.

The SEB, when evaluating ARES’ TCP, compared the proposed direct labor rates—for ARES and each of its subcontractors, for each labor category, and for each year—to existing incumbent rates using its “low rate tool.”<sup>12</sup> AR, Tab 14.8, ARES TCP & Low Rate Tool (FPR) at 6732 (ARES DL Sheet); Tab 14.7, ARES TCP Analysis (FPR) at 6731 (Direct LR Sheet). The evaluators determined that, in some instances, ARES proposed direct labor rates that were higher than incumbent direct labor rates, and in other instances, lower than incumbent rates. Id. Additionally, the SEB analyzed whether each offeror, including ARES, had proposed “direct labor dollars sufficient to capture a motivated and qualified workforce and had sufficient margin or cushion throughout the labor categories, taken as a whole, to achieve its proposed incumbent capture rate.” Supp. COS at 18. With regard to ARES, the agency found that ARES’ total direct labor dollars exceeded total incumbent direct labor rates by \$1,287,520, and thereby “resulted in sufficient cushion to maintain incumbent salaries,” and “sufficient direct labor dollars to implement the proposed management approach.” Id. at 18, 19; AR, Tab 14.8, ARES TCP & Low Rate Tool (FPR) at 6732 (Summary Sheet). Lastly, the SEB considered that ARES and its subcontractors had policies indicating they would keep incumbent salaries similar to what the individuals were currently being paid. Supp. COS at 20-21.

The SEB also reviewed ARES’ proposed fringe benefits as part of its TCP evaluation. Specifically, the evaluators reviewed Bureau of Labor Statistics employee benefit survey data, and also considered the extent to which ARES and its subcontractors provided paid time-off policies (e.g., vacation leave, sick leave, holidays); premium pay and incentive bonuses; policies regarding recognition of seniority, salaries, and fringe benefits for incumbent employees; policies and practices regarding health insurance coverage, the types of health insurance benefits offered (e.g., medical, dental, vision), the company share of health-care premium costs, the effective date of coverage and anticipated escalation of insurance costs; flexible spending accounts; health savings accounts; and retirement savings plans, including the company’s contribution. AR, Tab 14.7, ARES TCP Analysis (FPR), at 6731 (TCP Matrix Sheet); Supp. COS at 24. In sum, the agency found the direct labor rates and fringe benefits within ARES’ TCP

---

<sup>12</sup> The contracting officer states that the RFP’s two management labor categories were not part of the agency’s low-rate comparison, as offerors were required to provide signed letters of commitment for these key personnel positions which included agreed-upon direct labor rates. Supp. COS at 11. Additionally, the record reflects the agency’s awareness that for those RFP labor categories for which no incumbent composite rate existed (i.e., they were not part of the incumbent KLXS II contract), there was likewise no “incumbent employee[] to capture.” Id. at 19.

sufficient to achieve the offeror's proposed incumbent capture rate. AR, Tab 14, ARES SEB Report at 6682.

Based on our review of the record, we find the agency's evaluation of ARES' TCP to be reasonable, consistent with the terms of the solicitation, and fully documented. As set forth above, the agency conducted a detailed review of ARES' direct labor rates and fringe benefits to determine whether the offeror's TCP would achieve its proposed incumbent capture. First, the agency reasonably compared ARES' individual direct labor rates to incumbent rates for all labor categories where those rates existed.<sup>13</sup> Further, the agency also reasonably considered, on a macro-level, whether ARES' total direct labor dollars exceeded incumbent direct labor rates and thereby provided a sufficient "cushion" that would permit ARES to achieve its stated incumbent capture. Lastly, the agency reasonably considered the fringe benefits being provided by ARES and its subcontractors.

Millennium essentially argues the agency's TCP evaluation "didn't go far enough" (e.g., did not adequately assess ARES' direct labor rates for the nine non-incumbent labor categories, and did not compare ARES' proposed fringe benefits to incumbent fringe benefits). Millennium Supp. Comments, Oct. 22, 2019, at 5-11. We find this argument amounts to disagreement with the agency's evaluation judgments, which does not demonstrate that those judgments were unreasonable or provide a basis on which to sustain the protest. Computer Scis. Corp., B-409386.2, B-409386.3, Jan. 8, 2015, 2015 CPD ¶ 34 at 4. As discussed above, our Office does not require an agency's cost evaluation of an offeror's compensation plan to achieve scientific certainty; rather, the methodology employed must be reasonable and realistic in view of the information reasonably available to the agency. CSI, Inc.; Visual Awareness Techs. & Consulting, Inc., supra. We find that the agency's evaluation met this requirement here.<sup>14</sup>

### Best-Value Determination

Lastly, Millennium contends that NASA's best-value determination was unreasonable. The protester maintains the agency disregarded the solicitation's best-value scheme

---

<sup>13</sup> While Millennium asserts the agency failed to compare the direct labor rates of ARES and its subcontractors to incumbent compensation, and "only" checked whether ARES' proposed direct labor rates fell within the awardee's proposed salary ranges, Comments and Supp. Protest at 4-12, we find the protester to be factually mistaken. Millennium's assertion here focuses solely on the agency's "TCP tool," which considered whether an offeror's proposed direct labor rates were internally consistent, and ignores the "low rate tool" that compared ARES proposed direct labor rates to the incumbent composite rates. AR, Tab 14.8, ARES TCP & Low Rate Tool (FPR) at 6732 (ARES DL Sheet).

<sup>14</sup> As we find the agency's compensation plan evaluation of ARES to be reasonable, we likewise find no merit in Millennium's challenge to the corresponding cost realism evaluation of ARES' direct labor rates.

and effectively elevated cost to be the most important factor. Protest at 41-46; Millennium Comments, Oct. 10, 2019, at 6-8. We disagree.

Source selection officials in negotiated best-value procurements have broad discretion in making cost/technical tradeoffs, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the solicitation's stated evaluation criteria. Diversified Tech. & Servs. of Va., Inc., B-412090.2, B-412090.3, Dec. 16, 2015, 2016 CPD ¶ 34 at 11; InfoPro, Inc., B-408642.2, B-408642.3, Dec. 23, 2014, 2015 CPD ¶ 59 at 24. Source selection decisions must be documented, and the documentation must include the rationale for any business judgments and cost/technical tradeoffs made, including the benefits associated with the additional costs. FAR § 15.308; General Dynamics Info. Tech., Inc., B-406059.2, Mar. 30, 2012, 2012 CPD ¶ 138 at 4. However, there is no need for extensive documentation of every consideration factored into a tradeoff decision; rather, the documentation need only be sufficient to establish that the agency was aware of the relative merits and costs of the competing proposals and that the source selection was reasonably based. Diversified Tech. & Servs. of Va., Inc., supra, at 12; Wyle Labs., Inc., B-407784, Feb. 19, 2013, 2013 CPD ¶ 63 at 11.

The SSA, when performing his best-value determination, began by reviewing the relative importance of the RFP's stated evaluation criteria--that mission suitability was more important than past performance, which was more important than cost. AR, Tab 17, SSDD at 6942, 6949. The SSA then conducted a comparative assessment of the ARES and Millennium proposals by evaluation factor. Under the mission suitability factor, the SSA found that ARES possessed identified strengths which Millennium did not. Id. at 6950-6951. Specifically, under the management subfactor, ARES proposed a knowledge transfer and knowledge development approach that would deliver relevant knowledge at appropriate times through multiple specified practices. Additionally, under the technical subfactor, ARES had been assigned a strength related to its identification of EGS-specific lifecycle transition risks, not evident from the RFP, which demonstrated ARES' understanding of PWS requirements and increased the likelihood of successful contract performance. Id. at 6945; Tab 14, ARES SEB Report at 6683-6684, 6689. The SSA concluded that ARES possessed a "slight advantage" over Millennium under the mission suitability factor. AR, Tab 17, SSDD at 6957.

The SSA performed a similar comparison of the offerors' proposals under the other evaluation criteria. The SSA determined that Millennium had a "moderate advantage" over ARES under the past performance factor, given Millennium's relevant experience performing project management and project integration work which, as discussed above, ARES did not also possess.<sup>15</sup> Id. at 6957. Lastly, the SSA determined that

---

<sup>15</sup> The SSA also noted that, "the RFP captures that, over time, as the EGS Program transitions from development to operations, the significance of the role and the level of effort associated with PWS 6.0 [project management and project integration] declines." Id. at 6957.

ARES' cost was significantly lower than that of Millennium, such that ARES had a "significant advantage [over Millennium] in the Cost factor." The SSA ultimately concluded that ARES' advantages under both the mission suitability and cost factors outweighed Millennium's advantage under the past performance factor, and that ARES' proposal represented the best value to the government. Id. at 6957-6958.

We find the agency's source selection decision was reasonable, consistent with the solicitation's stated evaluation criteria, and documented in textbook fashion. As the record demonstrates, the SSA properly took into account the relative importance of the RFP's stated evaluation criteria. The SSA then looked behind the evaluation ratings and reasonably considered the underlying qualitative merits, and relative costs, that distinguished the offerors' proposals. With regard to the mission suitability factor, the SSA concentrated on the underlying strengths--which Millennium does not dispute--which made ARES' proposal technically superior to that of the other offerors, including the protester. The SSA then reasonably concluded that, in his judgment, ARES' advantages under the mission suitability and cost factors outweighed Millennium's advantage under the past performance factor. Under these circumstances, we see no basis to question the agency's decision to make award to ARES.

We also find no merit in Millennium's allegation that the agency improperly "discount[ed] Past Performance, and effectively elevat[ed] Cost to the most important factor." Protest at 42. Contracting officials may not announce in the solicitation that they will use one evaluation scheme and then follow another without informing offerors of the changed plan and providing them an opportunity to submit proposals on that basis. Qwest Gov't Servs., Inc. d/b/a CenturyLink QGS, B-416658.4, B-416658.5, June 17, 2019, 2019 CPD ¶ 220 at 5; Fintrac, Inc., B-311462.2, B-311462.3, Oct. 14, 2008, 2008 CPD ¶ 191 at 6.

As set forth above, the SSA considered the size of the relative advantage possessed by each offeror, under each evaluation criterion, as part of determining the qualitative merits of offerors' proposals--a "slight advantage" for ARES in mission suitability, a "moderate advantage" for Millennium in past performance, and a "significant advantage" for ARES in cost. AR, Tab 17, SSDD at 6957-6958. The SSA also considered the risk to contract performance associated with ARES' lack of relevant past performance in one of six PWS task areas. Id. We find nothing improper with a source selection official quantifying the relative evaluation advantages possessed by each offeror as part of making a best-value determination. Here, the SSA reasonably determined that ARES' cost advantage was a significant one, while Millennium's past performance advantage was reasonably considered to be a moderate one in light of what ARES' missing past performance represented. The mere fact that ARES's relative cost advantage was found to be greater than Millennium's relative past performance advantage does not

mean, as the protester contends, the SSA improperly altered the stated importance of the evaluation criteria.

The protest is dismissed in part and denied in part.

Thomas H. Armstrong  
General Counsel