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Decision

Matter of: BAE Systems San Diego Ship Repair, Inc.

File: B-423271

Date: April 14, 2025

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Stowell B. Holcomb, Esq., Jackson Holcomb, LLP, for Continental Maritime of San Diego, LLC, the intervenor.

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DIGEST

1. Protest challenging agency's conclusion that protester did not demonstrate sufficient capacity at its privately-operated dry dock to qualify for an award preference is denied where the evaluation was reasonable and consistent with the stated evaluation criteria.

2. Protest alleging that agency evaluated offerors' manpower proposals unreasonably and unequally is denied where the protester's assertions are not supported by the record.

DECISION

BAE Systems San Diego Ship Repair, Inc., of San Diego, California, protests the award of a contract to Continental Maritime of San Diego, LLC (CMSD), of San Diego, California, under request for proposals (RFP) No. N00024-24-R-4429, issued by the Department of the Navy, Naval Sea Systems Command, for ship repair and alteration services for the USS Russell. BAE alleges that the agency's evaluation of offerors' proposals and subsequent source selection decision were improper.

We deny the protest.

BACKGROUND

The Navy issued the RFP on May 30, 2024, under Federal Acquisition Regulation part 15, seeking proposals to provide ship maintenance, repair, and modernization

services--referred to as a "docking selected restricted availability" (DSRA) or, more generally, as an "availability"--for the naval vessel USS Russell under the Chief of Naval Operations (CNO). Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 2; Agency Report (AR), Tab 1, RFP at 1, 175.¹ The solicitation required the successful contractor to furnish the material, support, and facilities--as well as to provide the management, technical, procurement, production, testing, and quality assurance services--necessary to prepare and accomplish repairs and alterations for the USS Russell in accordance with the solicitation. RFP at 4, 70. The solicitation contemplated the award of a fixed-price contract with a 14-month period of performance. COS/MOL at 2; RFP at 116-120.

Basis for Award and General Evaluation Criteria

The solicitation advised that award would be made to the responsible offeror whose proposal conformed to the solicitation requirements and represented the best value to the government in a tradeoff considering the following five factors: (1) technical eligibility and physical resource capacity; (2) manpower and small business participation; (3) schedule and execution approach; (4) past performance; and (5) price. RFP at 196. The manpower and small business factor was comprised of two subfactors: (a) manpower; and (b) small business participation. *Id.*

The RFP provided that the agency would first evaluate proposals under the technical eligibility and physical resource capacity factor and the past performance factor as either acceptable or unacceptable. *Id.* at 197. If a proposal was found to be unacceptable under either factor, the agency reserved the right to not further evaluate that proposal. *Id.* For the evaluation under the remaining non-price factors and subfactors, the agency would use the adjectival ratings of outstanding, good, acceptable, marginal, and unacceptable. *Id.* at 197, 204-205. For the purpose of a tradeoff, the manpower and small business participation factor and the schedule and execution approach factor were equal in importance. *Id.* at 197. Under the manpower and small business participation factor, the manpower subfactor was more important than the small business participation subfactor. *Id.* The non-price factors, when combined, were considered significantly more important than price. *Id.*

Limitation on Government-Operated Dry Docks

As relevant here, the solicitation permitted each offeror to submit two different types of proposals--where proposal volume A would be for performance at an offeror's private facility and proposal volume B would be for performance at the government-provided dock at the Naval Base San Diego--[i]n support of maintaining compliance with Section 126 of the National Defense Authorization Act for Fiscal Year 2024." RFP

¹ The solicitation was amended eight times. COS/MOL at 2. References to the solicitation are to the conformed RFP provided by the agency at tab 1 of its report. Citations to the record are to the Adobe PDF page numbers.

at 197. Section 126 of the National Defense Authorization Act for Fiscal Year 2024, in relevant part, provides as follows:

SEC. 126. Limitation on Consideration of Government-Operated Dry Docks in Certain Contract Solicitations.

(a) In General.— With respect to a solicitation of the Secretary of the Navy for the award of a contract for private sector non-nuclear surface ship maintenance in San Diego, California, the Secretary shall ensure, in accordance with section 2466 of title 10, United States Code, that Government-operated dry docks are only included in such solicitation if there is insufficient capacity at privately-operated dry docks for performance of such contract.

Pub. L. No. 118-31, § 126, 137 Stat. 136, 170-171 (2023). Offerors were permitted to submit just a volume A proposal, just a volume B proposal, or both proposal volumes A and B. RFP at 177. The solicitation provided that proposal volumes A and B “shall be evaluated at the same time,” and further specified as follows:

All Volume A proposals shall be considered for award before all Volume B proposals. Volume A proposals must be found at least acceptable under all Non-Price Factors and include fair and reasonable pricing in the context of all submitted proposals. If no Volume A proposal results in a selection, all Volume B proposals will be considered for award in accordance with [the RFP’s] Section M criteria.

Id. at 197.

Offerors submitting volume A proposals were required to provide specific information under the technical eligibility and physical resource capacity factor to demonstrate their ability to provide sufficient capacity to perform the requirement at a privately-operated dry dock. *Id.* at 183-184. The required information included: (1) a completed eligibility criteria data sheet (RFP attach. S-5); (2) a completed execution milestones and key event dates attachment (RFP attach. J-3) with a signed letter “identifying and confirming ownership” of the proposed pier and dry dock for the proposed milestone dates; (3) a current dry dock certification for the proposed dry dock; (4) a completed pier and dry dock graphical representation (RFP attach. S-8); and (5) a narrative in support of the graphical representation. *Id.*

In the eligibility criteria data sheet, offerors were required to “identif[y] the specific pier and drydock at the contractor facility intended to be used for the proposed availability and indicate[] that the pier and drydock meet the minimum characteristics.” *Id.* at 183. The signed letter was to “identify[] and confirm[] ownership of . . . a drydock capable of docking the vessel” for the performance period specified in the execution milestone and key event dates attachment. *Id.* In the pier and dry dock graphical representation attachment, offerors were required to “demonstrate the Offeror has the pier and dry

dock capable for completing the requirements of the proposed availability,” and to show the “piers and dry docks expected to be in working capacity,” including the “awarded and outstanding projects and work [that are] using those resources.” *Id.* at 183-184. The narrative in support of the pier and dry dock graphical representation was to include plans to resolve any pier and dry dock resource conflicts arising from proposed and awarded projects. *Id.* at 184. The RFP advised that “[p]iers and dry docks must not be committed to multiple ships during the same time period without explanation.” *Id.*

For volume A proposals, evaluations under the technical eligibility and physical resource capacity factor would assess whether the offeror “has ownership or committed access to . . . a dry dock (Volume A) capable of docking the vessel . . . as outlined in the [offeror’s] Execution Milestones & Key Events (Attachment J-3),” and whether the proposed dry dock had the required certification. *Id.* at 199. The solicitation also provided that the agency would assess “whether the proposal demonstrates the Offeror’s capability to provide the required physical resources to complete the availability” with an “emphasis . . . on how the Offeror plans to de-conflict anticipated physical resource conflicts.” *Id.* To that end, the RFP stated that the agency would assess whether the offeror’s pier and dry dock graphical representation showed the offeror’s awarded and outstanding projects using those physical resources to assess “[s]chedule risks to projects that may impact the solicited availability’s docking resources.” *Id.*

Manpower Evaluation Scheme

As relevant here, under the manpower subfactor of the manpower and small business participation factor, the solicitation sought “specified workload data that contains historical workload performance and forecasted workload estimates.” *Id.* at 184. Offerors were to provide this information by completing a manpower performance data sheet, provided as solicitation attachment S-4, as well as submitting detailed manpower charts and manpower narratives. *Id.* at 184-186. The manpower data sheets required detailed monthly data on “all projects,” defined as follows:

Navy or Non-Navy Ship Repair and New Construction Projects, for which the Offeror is the prime or a major subcontractor (performing 30 [percent] or more of a CNO availability or comparable portion of a Non-Navy project) which were active (on-going or completed) or planned (awarded or proposed) (including the proposal for this solicitation) during the first month identified in Attachment S-4A & S-4B and the Contract Complete Date of this solicitation.

Id. at 184. Offerors were advised that their manpower data sheets “must capture all work performed by the Offeror within the shipyard and at the local Naval Station, if the Offeror’s shipyard is within the homeport fleet concentration area.” *Id.* Manpower charts, required in the form of stacked area graphs, were to show the total current and forecasted full-time equivalent (FTE) resources for all projects identified in the data sheet. *Id.* at 185. In addition, the RFP instructed offerors to submit manpower

narratives “describing and quantifying” the information in the manpower data sheet and manpower charts and to explain the offeror’s plans to “adjust or maintain the current workforce to achieve the proposed forecasted FTE levels.” *Id.*

The solicitation advised that offerors’ manpower proposals would be evaluated to “assess the quality and risk of the Offeror’s plan to provide efficient manpower to successfully complete the availability’s requirements with a focus on workload assessment, labor composition and the associated narrative.” *Id.* at 199. For this assessment, the agency would use the offeror’s data to calculate its current and projected FTEs for the “Minimum Workload Forecast and [the] Maximum Workload Forecast.” *Id.* at 200. A current FTE count that is more than 50 FTEs below the forecasted FTE count would be assessed as a weakness “unless the narrative demonstrated that the FTEs is not a risk under the circumstances proposed,” while a shortfall greater than or equal to 200 FTEs would be assessed as appreciably increasing risk. *Id.* The solicitation further provided that the assessment would examine the “reasonableness and effectiveness of the Offeror’s approach,” with a specific focus on “[e]xplanations and mitigations of weaknesses” in the offeror’s “FTE and Labor Composition.” *Id.* at 201.

Evaluation and Award

The agency received four timely submitted proposals. COS/MOL at 4. BAE submitted both a volume A proposal and a volume B proposal; CMSD and another offeror submitted just volume B proposals. After evaluation, the agency assigned the following ratings to the proposals submitted by BAE and CMSD:

	BAE - A	BAE - B	CMSD - B
Technical Eligibility & Physical Resource Capacity	Acceptable	Acceptable	Acceptable
Manpower & Small Business Participation	Acceptable	Acceptable	Good
Manpower	Acceptable	Acceptable	Good
Small Business Participation	Good	Good	Good
Schedule & Execution Approach	Acceptable	Acceptable	Acceptable
Past Performance	Acceptable	Acceptable	Acceptable
Price	\$80,292,705	\$73,398,800	\$78,384,330

AR, Tab 6, Source Selection Advisory Council (SSAC) Report at 3.

With respect to considerations under section 126 of the National Defense Authorization Act for Fiscal Year 2024, the source selection authority (SSA) noted that, because “BAE was the only Offeror that proposed a private sector dock, and the proposed dock is considered ‘utilized’ . . . , preference was not given to filling unused private sector dock capacity.” AR, Tab 7, Source Selection Decision Document (SSDD) at 1. In this regard, the agency found that BAE’s proposal of the Pride of California (POCA) dry

dock, while technically acceptable, proposed a “docking scenario [that] has the USS RUSSELL tandem docked with the USS GREEN BAY (LPD 20), another outstanding project.” AR, Tab 4, Source Selection Evaluation Board (SSEB) Report at 6. The SSEB identified the tandem docking scenario as a “potential physical resource conflict in the event USS GREEN BAY is awarded to BAE” and that BAE’s narrative “did not provide sufficient information on how they would de-conflict this docking resources issue other than to note the [POCA] drydock is capable of tandem docking [guided-missile destroyer (DDG)] and [littoral combat ship (LCS)] class ships.” *Id.* In this regard, noting that the USS Green Bay was a landing platform dock (LPD) class ship while the USS Russell was a DDG class ship, the SSAB concluded that BAE’s POCA dock could not accommodate the combined lengths and widths of the two ships. AR, Tab 6, SSAC Report at 4. Based on this conclusion, the SSAC found that the “technical risk is increased without further analysis of how BAE would conduct a docking of both USS GREEN BAY and USS RUSSELL at the same time.” *Id.* The SSAC concluded that BAE’s volume A proposal “did not warrant preferential consideration” because BAE’s “proposed a private sector dock that will be encumbered with USS GREEN BAY” and thus did not offer sufficient capacity at a privately-operated dry dock for the performance of the USS Russell requirement.² *Id.* at 5-6.

After reviewing the underlying evaluation and consulting with the SSAC, the SSA concluded that CMSD’s volume B proposal represented the best value to the government. AR, Tab 7, SSDD at 1, 3. Specifically, in comparing the volume B proposals of BAE and CMSD, the SSA noted that BAE’s proposal received one strength and one significant weakness under the manpower subfactor, while CMSD’s proposal was assessed two strengths and no weaknesses. *Id.* at 2. The significant weakness was “due to [BAE’s] projected available FTEs not exceeding their current onboard average labor resulting in a shortfall of [DELETED] FTE[s] for the maximum workload scenario.” *Id.* Noting that CMSD has the highest rated non-price proposal, the SSA concluded that a price premium of 7 percent was “worth the benefit to the Government to ensure sufficient manpower is available to support the successful execution of the work.” *Id.*

Based on this conclusion, the agency awarded the contract to CMSD and notified BAE of the award decision on November 29. COS/MOL at 6. After receiving a debriefing, BAE filed this protest.

DISCUSSION

BAE first challenges the agency’s decision to consider volume B proposals, alleging that the agency erroneously rejected BAE’s volume A proposal based on an unreasonable assessment of BAE’s proposed dry dock capacity. Protest at 19-27. BAE also argues that the agency evaluated proposals unreasonably and disparately under the manpower

² The agency notes that BAE was notified on August 14 (before proposals for the USS Russell were due on September 16) that it was the sole offeror for the USS Green Bay contract, which was to be performed at BAE’s POCA dock. COS/MOL at 10-11.

subfactor of the manpower and small business participation factor. *Id.* at 33-53; Comments at 21-49. As we discuss below, we find no basis to sustain the protest.³

As an initial matter, in reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. *Sikorsky Aircraft Corp.*, B-421359, B-421359.2, Apr. 6, 2023, 2023 CPD ¶ 87 at 18. Rather, we will review the record to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. *Id.*; *Computer World Servs. Corp.*, B-410513, B-410513.2, Dec. 31, 2014, 2015 CPD ¶ 21 at 6. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. *Vertex Aerospace, LLC*, B-417065, B-417065.2, Feb. 5, 2019, 2019 CPD ¶ 75 at 8.

Evaluation of BAE's Volume A Proposal

The protester alleges that the agency's decision to reject BAE's technically acceptable and reasonably priced volume A proposal and to instead proceed with considering volume B proposals for award was erroneous and violates section 126 of the National Defense Authorization Act for Fiscal Year 2024. Protest at 19-27; Comments at 12-20. In this regard, the protester argues that the agency unreasonably assessed the available capacity at BAE's proposed private dry dock by misinterpreting BAE's proposal as offering "tandem docking." *Id.* The protester also contends that the agency improperly ignored BAE's proposed "deconflict strategy" of using another BAE-owned private dry dock, Pride of San Diego (POSD). *Id.* The agency responds that it evaluated BAE's volume A proposal in accordance with the solicitation and reasonably determined that BAE's proposed dry dock was encumbered by another project and therefore was not available for performance of the instant requirement. COS/MOL at 7-14. As discussed below, we agree with the agency.

It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information which allows a meaningful review by the procuring agency. *Peraton, Inc.*, B-417088, B-417088.2, Feb. 6, 2019, 2019 CPD ¶ 190 at 14. Agencies are not required to infer information from an inadequately detailed proposal or information that the protester elected not to provide. *Optimization Consulting, Inc.*, B-407377, B-407377.2, Dec. 28, 2012, 2013 CPD ¶ 16 at 9 n.17. An offeror bears the risk that the agency will find its proposal unacceptable where it fails to demonstrate compliance with all of a solicitation's requirements. *ManTech Advanced Sys. Int'l, Inc.*, B-413717, Dec. 16, 2016, 2016 CPD ¶ 370 at 5, 7.

As noted above, the solicitation instructed offerors to complete the pier and dry dock graphical representation attachment to "demonstrate the Offeror has the pier and drydock capable for completing the requirements of the proposed availability" and to

³ While our decision does not discuss every argument raised by the protester, we have considered them all and find that none provides a basis to sustain the protest.

show “piers and dry docks expected to be in working capacity by month” including the “awarded and outstanding projects and work using those resources.” RFP at 183-184. With regard to the graphical representation, the solicitation also specifically advised that “[p]iers and dry docks must not be committed to multiple ships during the same time period without explanation.” *Id.* at 184. Moreover, the solicitation stated that the agency would review the offeror’s pier and dry dock graphical representation attachment specifically to assess “[s]chedule risks to projects that may impact the solicited availability’s docking resources.” *Id.* at 199.

While the protester repeatedly asserts that it did not propose the tandem docking of the USS Russell and the USS Green Bay, see Protest at 24 n.5, Comments at 13-19, its proposal is not clear in this regard. Rather, BAE’s proposal included information that reasonably led the agency to conclude that BAE was proposing to dock both ships at POCA during the same period. Specifically, BAE’s pier and dry dock graphical representation clearly showed both the USS Russell and the USS Green Bay positioned at the POCA dock for the same period without any explanation except to note generally that “[f]inal pier assignments will be determined at the time of contract award, due to execution of bidder’s firm work and other proposed awards.” AR, Tab 2, BAE Vol. A, Technical Proposal at 9. Moreover, in its 10-page volume A technical proposal, BAE more than once touted its POCA dock’s tandem docking capabilities--specifically, its ability to accommodate a DDG class ship and a LCS class ship at the same time--to “maximize drydocking capacity of the homeport.” *Id.* at 3, 10.

Without any additional explanation in BAE’s proposal for its graphical representation showing both the USS Russell and the USS Green Bay docked at POCA during the same period, we see no basis to fault the agency’s conclusion that BAE was proposing tandem docking of the two ships. Moreover, the agency informed BAE that it was the only offeror for the USS Green Bay contract more than a month before the due date for proposal submissions here. On this record, we find that it was incumbent upon BAE to provide an adequate explanation to resolve the apparent conflict caused by both ships being proposed at POCA for the same period. The burden of submitting an adequately written proposal falls on the offeror, and the offeror runs the risk that its proposal will be evaluated unfavorably when it fails to meet this burden. *Amentum Servs., Inc., VS2, LLC, B-418742.3 et al.*, Sept. 30, 2021, 2021 CPD ¶ 334 at 9.

Further, we find no support in the record for the protester’s assertion that the agency unreasonably ignored BAE’s proposal of the POSD dry dock as an alternative dry dock. In this regard, the protester asserts that its proposal met solicitation requirements by confirming the availability of another BAE-owned dry dock capable of performing the requirement and by promising to make final dock assignments at contract award to meet “all other contract schedule and facility requirements/ provisions.” See Protest at 22-26; Comments at 13-19. The protester argues that it thereby proposed “to perform the USS RUSSELL availability in the POSD drydock if the POCA drydock was encumbered.” Comments at 14. The record, however, does not support the protester’s assertions in this regard.

Instead, the record shows that BAE's volume A proposal unequivocally proposed the POCA dry dock--and only the POCA dry dock--for the solicited work. See COS/MOL at 11-13; AR, Tab 2, BAE Vol. A, Technical Proposal at 3 ("BAE Systems will be utilizing the Pride of California (POCA) Drydock and Pier [DELETED]."); 8 ("The RUSSELL DSRA docking period will be performed in BAE Systems' Pride of California (POCA) drydock."). In this regard, all of the information BAE included in its proposal to demonstrate the technical merit of its proposed private dry dock identified only POCA by name (to the extent any dock was identified by name) as the dry dock being proposed for the solicited work. Indeed, BAE's eligibility criteria data sheet, execution milestone and key event dates attachment, dry dock certification, and pier and dry dock graphical representation all identified POCA as the proposed dry dock. See *id.* at 4, 6, 8, 9.

Moreover, BAE's proposal never expressly proposed the POSD dry dock as a means to resolve a potential schedule conflict at the POCA dry dock. In this regard, the record shows that BAE's volume A technical narrative included several general statements about BAE's ownership of two certified dry docks and its plan to make "[f]inal private dock and pier assignments . . . at the time of contract award, due to execution of bidder's firm work and other proposal awards." AR, Tab 2, BAE Vol. A, Technical Proposal at 3, 9, 10. BAE's proposal, however, does not specifically propose POSD as a dry dock with capacity to perform the solicited requirements, as an alternative or otherwise. See *generally, id.*

As a matter of fact, the term "POSD" or "Pride of San Diego" appears only once in BAE's volume A technical proposal: as a graphical entry in BAE's pier and dry dock graphical representation. *Id.* at 9. In that representation, however, POSD is shown as occupied by proposed work on another ship, the USS [DELETED], during the period of performance for the USS Russell. *Id.* As noted above, that same graphical representation showed both the USS Russell and the USS Green Bay occupying the POCA dry dock during that same period. *Id.* at 9. In sum, for the applicable period, BAE's graphical representation showed both the USS Russell and the USS Green Bay at the POCA dock and the USS [DELETED] at the POSD dock. *Id.* Moreover, just as no specific explanation was offered for the graphical representation showing both the USS Russell and the USS Green Bay at the POCA dock, no additional explanation was provided with respect to the graphical representation showing that POSD was occupied by work on another outstanding proposal. In this regard, the "Resource Conflicts" portion of BAE's proposal simply acknowledged that BAE "currently has outstanding proposals," including for work on the USS Green Bay and the USS [DELETED], but did not mention POSD or any other specific de-conflicting plan, other than a general promise to "take[] reasonable and responsible steps to ensure the resources will be available to perform awarded work." *Id.* at 10.

On this record, we find that the agency reasonably concluded that BAE's proposal "did not provide sufficient information on how they would de-conflict this docking resources issue other than to note the [POCA] drydock is capable of tandem docking DDG and LCS class ships." AR, Tab 4, SSEB Report at 6. As noted, the solicitation advised that "[p]iers and dry docks must not be committed to multiple ships during the same time

period without explanation” and that the agency would assess the offeror’s “capability to provide the required physical resources” with an “emphasis . . . on how the Offeror plans to de-conflict anticipated physical resource conflicts.” RFP at 184, 199. Here, BAE’s proposal provided no specific explanation or plan to address the potential conflict arising from the apparent commitment of multiple ships at the POCA dry dock. Accordingly, we find that the agency reasonably concluded that the POCA dock was unavailable. Moreover, because BAE never expressly proposed the POSD dock to resolve conflicts at the POCA dock, other than a graphical representation showing the POSD dock occupied by another outstanding project, we find that the agency reasonably did not consider the POSD dock as BAE’s proposed deconflicting strategy.

We therefore find no basis to object to the agency’s conclusion that BAE’s proposed private dry dock was “utilized” and did not offer sufficient capacity to perform the requirement for the USS Russell. See AR, Tab 7, SSDD at 1. Based on this conclusion, the agency reasonably decided to proceed with the consideration of volume B proposals to perform at a government dock without giving preferential treatment to BAE’s volume A proposal.

Evaluation of Volume B Proposals

BAE also contends that, even if the agency was justified in considering volume B proposals for award, the agency unreasonably and unequally evaluated those proposals under the manpower subfactor (of the manpower and small business participation factor). Specifically, the protester alleges that the agency unreasonably ignored information in BAE’s proposal in assessing a significant weakness for a significant shortfall in the firm’s manpower forecast. Protest at 33-48; Comments at 21-41. The protester also argues that the agency erroneously failed to consider a manpower shortfall arising from CMSD’s subcontract work on aircraft carrier projects. Protest at 48-53; Comments at 41-49. Based on our review of the record, we find no basis to object to the agency’s evaluation.

Evaluation of BAE’s Manpower Proposal

The protester challenges the Navy’s assessment of a significant weakness in BAE’s manpower proposal, asserting that the agency unreasonably ignored relevant information in BAE’s proposal. Specifically, the protester argues that the agency’s manpower calculations improperly excluded BAE’s proposed manpower from the firm’s projects in [DELETED] and [DELETED], resulting in a projected shortfall of [DELETED] FTEs under the maximum workload scenario. Protest at 33-48; Comments at 21-41. The protester argues that the agency similarly ignored BAE’s proposed use of affiliate resources and other mitigating measures that would have alleviated any concerns about a projected manpower shortage. *Id.* The agency responds that its evaluation properly excluded information about BAE’s affiliated entities and reasonably assessed a significant weakness for an unmitigated and significant shortfall in BAE’s manpower proposal. COS/MOL at 14-20; Supp. COS/MOL at 5-6.

The record shows that, using the data in BAE's manpower performance data sheet, the agency calculated BAE's projected maximum workload scenario to require at least [DELETED] FTEs, while also calculating BAE's available "Current Yard-Wide⁴ FTE" as [DELETED] FTEs. AR, Tab 4, SSEB Report at 22-23. Based on these calculations, the agency found that BAE's current yard-wide workforce would result in a manpower shortfall of [DELETED] FTEs under the maximum workload scenario. *Id.* at 23. Assessing a significant weakness for this projected manpower shortfall, the agency concluded that BAE's "in[-]progress project performance and current yard[-]wide FTE levels indicate a high risk of competition for resources that significantly increases the likelihood the offeror will not have the manpower resources to perform as planned." *Id.*

The protester argues that the agency's calculations unreasonably excluded the enterprise workforce data for its affiliate entities identified in BAE's data sheet as two projects: "Project 20 representing the ongoing and projected repair work at BAE Systems' [DELETED] shipyard, and Project 23 representing ongoing and projected repair work at BAE Systems' [DELETED] facility." Comments at 23. The protester contends that the agency was required to consider this information because the solicitation did not limit the data sheet information that could be submitted to projects located at the local shipyard.

The agency responds that it properly did not consider data about the protester's affiliate entities in the manpower calculation. In this regard, the agency contends that the solicitation clearly sought data about "all work performed by the Offeror within the shipyard and at the local Naval Station." COS/MOL at 14-20; Supp. COS/MOL at 5-6; see RFP at 184-185. The agency also argues that the protester's affiliate entities, in [DELETED] and [DELETED], were not the "Offeror" for BAE's proposal, and the solicitation required information about all projects "for which *the Offeror* is the prime or a major subcontractor" at the "*Offeror's*" shipyard. Supp. COS/MOL at 5-6.

Where a dispute exists as to a solicitation's actual requirements, we will first examine the plain language of the solicitation. *DAI Global, LLC*, B-416992, Jan. 17, 2019, 2019 CPD ¶ 25 at 4. 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. *Crew Training Int'l, Inc.*, B-414126, Feb. 7, 2017, 2017 CPD ¶ 53 at 4. A proposed interpretation of solicitation language would be

⁴ Although the solicitation does not define the term "Yard-Wide," the agency contends that the term was intended to limit the offeror's FTE data to those "within the [offeror's] shipyard and at the local Naval Station, if the Offeror's shipyard is within the homeport fleet concentration area." Supp. COS/MOL at 5-6. The protester disputes the agency's interpretation, arguing that the term could mean within any of the offeror's shipyards. Protester's Supp. Comments at 18-19. As further discussed below, we need not address this issue in this decision.

unreasonable insofar as it would render other solicitation language superfluous. See *Anders Constr., Inc.*, B-414261, Apr. 11, 2017, 2017 CPD ¶ 121 at 3-4.

Here, the protester's argument that the solicitation did not prohibit manpower data from outside the local San Diego shipyard wholly disregards the detailed solicitation instructions to complete the data sheet and manpower charts with specific, project-based data. As noted, the solicitation provided a detailed definition of "projects"--as "Navy or Non-Navy Ship Repair and New Construction Projects, for which the Offeror is the prime or a major subcontractor"--and instructed offerors to provide specific, detailed information about each project in the format provided in solicitation attachment S-4. RFP at 184-185. The solicitation further informed offerors that the agency would use this detailed, *project-specific* data to calculate the offeror's projected workload needs and the manpower available for meeting those needs, calculated as the offeror's historical and current yard-wide FTEs. *Id.* at 200.

The specific entries that the protester alleges should have been included in the calculations did not satisfy this definition of "projects" because they: (1) did not present data for discrete projects; and (2) represented the combined workforce data for two of the protester's affiliate entities, rather than projects "for which the Offeror is the prime or a major subcontractor."⁵ RFP at 184; see AR, Tab 2, Vol. 2B, Appendix B, BAE's Manpower Performance Data Sheet; AR, Tab 2, Vol. 2B, BAE's Manpower and Small Business Participation Proposal at 6-7. More specifically, despite being included in the manpower data sheet as "Project 20" and "Project 23," respectively, the entries for "BAE Systems [DELETED] Ship Repair" and "BAE Systems [DELETED] Ship Repair" provided summarized data for BAE's affiliate entities, "depict[ing] recent actual performance and forecasted manhour requirements," reflecting the purported resources of those affiliate entities rather than discrete projects. See AR, Tab 2, Vol. 2B, Appendix B, BAE's Manpower Performance Data Sheet; AR, Tab 2, Vol. 2B, BAE's Manpower and Small Business Participation Proposal at 10. Moreover, as the agency notes, the offeror in the protester's proposal is BAE Systems San Diego Ship Repair, Inc., of San Diego, California, not BAE's affiliate entities in [DELETED] and [DELETED]. Supp. COS/MOL at 5-6. On this record, we find no basis to conclude that the agency unreasonably excluded the data about BAE's affiliate entities from its evaluation of BAE's manpower.⁶

⁵ In contrast, the record shows that BAE followed the solicitation instructions when it identified and provided required data for the [DELETED] discrete shipyard projects in its manpower data sheet, *e.g.*, the USS Russell as project [DELETED], the USS Green Bay as project [DELETED], and the USS [DELETED] as project [DELETED].

⁶ Because the contemporaneous evaluation documents do not elaborate on why the agency excluded the disputed data in its calculations, BAE contends that the agency's post-protest explanations offer an impermissible *post-hoc* interpretation of the solicitation that should be afforded little weight. In our view, however, the agency's response provides a credible and consistent rationale for the Navy's contemporaneous decision to disregard the manpower data for BAE's affiliate entities. *Wackenhut Servs.*,
(continued...)

We also find no basis to question the SSEB's conclusion that BAE's manpower narrative "did not provide a sufficient explanation for overcoming the manning shortfall calculated by Navy's Projected Workload via the provided BAE attachment S-4." AR, Tab 4, SSEB Report at 24. While the protester argues that the mitigation approaches detailed in its manpower narrative--*i.e.*, its hiring initiative, enterprise resource sharing, and subcontracting approach--should have alleviated any concern about BAE's manpower shortfall, Protest at 40-48, Comments at 29-41, the protester's arguments in this regard amount to nothing more than disagreement with the agency's reasonable evaluation.

The record shows that the agency specifically considered each mitigation approach proposed in BAE's manpower narrative to determine whether the approach sufficiently mitigated the significant weakness of BAE's projected manpower shortage. AR, Tab 4, SSEB Report at 24. For example, the SSEB considered BAE's "attempt[] to mitigate hiring actions by hiring trades starting in March 2024" and found that BAE's narrative did "not state the progress with this hiring initiative to the date of their USS RUSSELL proposal receipt." *Id.* The agency further explains that, while BAE's narrative stated that it "initiated a hiring plan" by hiring "[DELETED] BAE Systems and temporary labor personnel since 03/01/2024" and planned to hire an "additional [DELETED] trade personnel" by December 2024, it did not explain whether its manpower charts included those [DELETED] additional FTEs or provide any detail about its plan to hire [DELETED] more FTEs in just three months (from September 16 to December 2024). Supp. COS/MOL at 6 n.7; see AR, Tab 2, Vol. 2B, BAE's Manpower and Small Business Participation Proposal at 9. While the protester now presents additional information by providing interim recruitment dates and even a new chart purportedly "based directly on the data provided in the hiring approach discussion" in BAE's proposal, these additional details were not included in the proposal that the agency evaluated. Comments at 35; see *generally*, AR, Tab 2, Vol. 2B, BAE's Manpower and Small Business Participation Proposal.

Therefore, on this record, we find no basis to question the agency's reasoned conclusion that BAE's manpower narrative did not provide sufficient information to overcome the risk presented by the assessed manpower shortage of [DELETED] FTEs.⁷ As noted above, the evaluation of proposals is a matter within the agency's

Inc., B-286037, B-286037.2, Nov. 14, 2000, 2001 CPD ¶ 114 at 4-5 ("While we generally accord greater weight to contemporaneous evidence, we will consider post-protest explanations that provide a rationale for contemporaneous conclusions, so long as those explanations are credible and consistent with the contemporaneous record."). Accordingly, we are not persuaded that the agency's explanation constitutes an impermissible *post-hoc* rationalization.

⁷ Although the protester also argues that various mitigating approaches in its manpower narrative should have at least improved the risk presented from a significant weakness
(continued...)

discretion; a protester's disagreement with the agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. See *Vertex Aerospace, LLC, supra*.

Evaluation of CMSD's Manpower Proposal

The protester also contends that the agency evaluated manpower proposals unreasonably and unequally by calculating manpower without considering CMSD's subcontract work on various aircraft carrier projects. Protest at 48-53; Comments at 41-49. Specifically, the protester alleges that publicly available information shows that CMSD has undertaken a significant manpower commitment from certain aircraft carrier subcontract work which, if included in the manpower performance calculations, would have resulted in a significant, forecasted shortage in CMSD's manpower. *Id.*

For the purpose of the evaluation under the manpower subfactor, the solicitation required offerors to provide "specified workload data that contains historical workload performance and forecasted workload estimates." RFP at 184. The required workload data was to be provided for all projects "for which the Offeror is the prime or a major subcontractor (performing 30 [percent] or more of a CNO availability or comparable portion of a Non-Navy project)." *Id.* The record shows that the SSEB assigned a rating of good to CMSD's manpower proposal based on two strengths assigned for calculations showing a manpower surplus of over [DELETED] FTEs under both the maximum and the minimum workload scenarios. AR, Tab 4, SSEB Report at 24.

The protester asserts, based on information it obtained from "public sources," that CMSD improperly omitted data about its subcontract work on two aircraft carrier projects from its manpower data sheet and charts. Protest at 48-53; Comments at 41-49; Supp. Comments at 13-16. BAE contends that the agency unreasonably ignored this omission during its evaluation of CMSD's manpower despite references to this work in CMSD's proposal. *Id.* The protester argues that, had CMSD included these projects in its manpower data sheet and manpower charts, the calculations would show a projected manpower shortage rather than a surplus. *Id.*

The agency responds that it reasonably did not consider the workforce data for CMSD's aircraft carrier subcontract work when evaluating CMSD's manpower proposal. COS/MOL at 21; Supp. COS/MOL at 1-2. In this regard, the agency notes that the solicitation did not require offerors to explain why work was excluded from the manpower data sheet and that the Navy had no reason to question CMSD's decision on what information was included in its proposal. Supp. COS/MOL at 2. The agency also notes that CMSD's proposal nevertheless did explain why it did not include the aircraft carrier subcontract work by explaining that it carries additional FTEs to support subcontracted work not required to be reported under this solicitation. *Id.*, citing AR,

to a weakness, the protester's disagreement with the agency in this regard also fails to establish that the agency's judgment was unreasonable.

Tab 3b, Vol. 2B-7, CMSD's Manpower Narrative at 3. Based on our review of the record, we agree with the agency.

As an initial matter, while the solicitation required offerors to provide data about projects for which they were "the prime or a major subcontractor" (defined as performing 30 percent or more of the work), it did not require offerors to provide any information about subcontractor projects below that threshold. RFP at 184. Specifically, the protester appears to suggest that CMSD was required to provide detailed data about its aircraft carrier subcontract work and then allow the agency to confirm that CMSD was performing less than 30 percent of the work, see Supp. Comments at 16, but the solicitation included no such requirement. Rather, the solicitation relied on the offeror to provide the required information for projects that met the applicable solicitation definition, and advised that the manpower evaluation would be based on the information provided in the offeror's proposal.⁸ RFP at 184-186, 199-201. To the extent an offeror determined that a particular work effort did not meet the threshold criteria for projects required to be included in the proposal, nothing in the solicitation required the Navy to investigate beyond the four corners of the proposal to question that determination.

In any event, the record shows that CMSD's proposal informed the agency that its aircraft carrier subcontract work did not fall within the definition of projects required to be included in the proposal. In addition to explaining that it "carries additional organic FTEs to support other subcontracted work that is less than the 30 [percent] of a CNO availability required for reporting [in accordance with] this solicitation," CMSD specifically referred to its aircraft carrier subcontract work as "additional" work that was not required to be "reported" in its manpower proposal. See AR, Tab 3b, Vol. 2B-7, CMSD's Manpower Narrative at 1 ("In *addition* to supporting the [DELETED] [availabilities], CMSD is presently supporting the following availability . . ."); 2 ("CMSD's still has *additional* labor force available not accounted for in the scheduled FTEs currently supporting non-Prime [aircraft carrier] availabilities. . . . [fiscal year] 22 Q3 and Q4 FTEs continue to increase with a peak of [DELETED] FTEs in November 2022 for *reported* availabilities, *plus an additional* [DELETED] FTE supporting [aircraft carrier] projects for a total of [DELETED] CMSD FTEs.") (emphasis added). On this record, we find that the agency reasonably did not consider CMSD's additional aircraft carrier

⁸ The protester also complains that the agency's post-protest explanation in this regard offers various theories about CMSD's aircraft carrier subcontract work without any contemporaneous evaluation documentation about this work, and thus constitutes an impermissible *post-hoc* rationalization. See Supp. Comments at 1-16. As our Office has noted, we do not expect an agency's evaluation report to "prove a negative." See *BillSmart Solutions, LLC*, B-413272.4, B-413272.5, Oct. 23, 2017, 2017 CPD ¶ 325 at 14 n.19. Thus, there was no requirement for the agency to document why it did not consider information that the solicitation did not require to be included in an offeror's proposal, and which the awardee did not, in fact, include.

project manpower data, which fell outside the definition of projects required to be included in the offerors' manpower charts and data sheets.⁹

We similarly find that the protester's allegation that the Navy evaluated manpower disparately is unsupported by this record. In this regard, the agency did not consider this non-major subcontractor work in its manpower evaluation just as the agency declined to include BAE's affiliate manpower data (which, as discussed above, also didn't satisfy the solicitation requirements) in the calculations. Accordingly, we find no basis to sustain the protest.¹⁰

The protest is denied.

Edda Emmanuelli Perez
General Counsel

⁹ In any case, the intervenor confirms that the aircraft carrier projects were not included in its proposal because CMSD was not a "major subcontractor" as defined by the solicitation, performing substantially less than 30 percent of the work for those projects. Intervenor's Supp. Comments at 1-2; Intervenor's Comments, exh. A, CMSD Project Manager Decl. at 1.

¹⁰ The protester also argues that the agency's best-value tradeoff decision was improper because it was based on an unreasonable and unequal evaluation. Protest at 57-59. This allegation is based on the protester's challenges to the agency's evaluation of proposals. As discussed above, we find no basis to object to the agency's evaluation of proposals. Accordingly, we dismiss the protester's challenge to the agency's best-value tradeoff decision because they do not establish an independent bases of protest. *Merrill Aviation & Defense*, B-416837, B-416837.2, Dec. 11, 2018, 2018 CPD ¶ 421 at 10 (dismissing challenge to source selection decision as derivative of denied challenges to the agency's technical evaluation).