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Decision

Matter of: ANHAM FZCO

File: B-414770; B-414770.2; B-414770.3

Date: September 14, 2017

Eric J. Marcotte, Esq., Kevin P. Connelly, Esq., Kelly E. Buroker, Esq., and Tamara Droubi, Esq., Vedder Price, P.C., for the protester.
Daniel R. Forman, Esq., and Christian N. Curran, Esq., Crowell & Moring LLP, for PAE Government Services, Inc., the intervenor.
Jonathan A. Hardage, Esq., April Neihsl, Esq., and Andrew W. Mullett, Esq., Department of the Army, for the agency.
Lois Hanshaw, Esq., Glenn G. Wolcott, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the evaluation of the awardee's past performance and cost/price is denied where the record demonstrates that the agency's evaluation was reasonable and consistent with the stated evaluation criteria.
 2. Protest alleging that discussions were not meaningful is denied where the agency led the protester into the area of its proposal requiring additional information or improvement.
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DECISION

ANHAM FZCO (ANHAM), of Dubai, United Arab Emirates, the incumbent joint venture contractor, protests the award of a contract to PAE Government Services, Inc. (PAE), of Arlington, Virginia, under request for proposals (RFP) No. W56HZV-15-R-0139 issued by the Department of the Army, U.S. Army Materiel Command, for the National Maintenance Strategy (NMS) program in Afghanistan.

We deny the protest.

The RFP, issued on July 15, 2016, sought a contractor to manage, perform, and administer the NMS program. This program requires the contractor to provide training and mentoring, and contractor logistics support (CLS) services to the Afghan National Defense Security Forces (ANDSF), in order to transition responsibility for maintenance,

sustainment, and supply chain management for vehicles and ground equipment to the ANDSF.¹ Agency Report (AR), Tab 4, RFP at 1, 4. Offerors were also required to provide personnel security, life support, and facility management. RFP at C.2.

The RFP contemplated the award of a single contract for a base year and four 1-year option periods with fixed-price, cost-plus-incentive-fee (CPIF), cost-plus-fixed-fee (CPFF), and cost-with-no-fee contract line items (CLINs). Id. at M.1.1. Award would be made on a best-value basis considering four evaluation factors, listed in descending order of importance: past performance, mission capability, cost/price, and small business participation.² RFP at M.4.1.

Regarding the past performance factor, the RFP required offerors to provide up to three recent and relevant contracts performed by the offeror or its significant subcontractor.³ RFP at L.4.1.1. Relevant contracts would be viewed as those related to three Performance Work Statement (PWS) activities, including, as relevant here, CLS maintenance for vehicles and ground equipment, to include maintenance support, warehousing, and supply chain management. Id. at L.4.1.1.3. Additionally, the RFP provided that offerors “shall not” identify broader contract instruments (BCIs), such as indefinite-delivery, indefinite-quantity (IDIQ) contracts, as recent and relevant contracts

¹ The ANDSF consists of the Afghanistan National Army (ANA) in the Ministry of Defense, and the Afghanistan National Police (ANP) in the Ministry of Interior; the ANA and ANP are independent of each other with separate facilities, maintenance locations, and operating procedures. RFP at 4. The NMS program is designed to curtail ANDSF’s heavy reliance on contractors by training the ANDSF to effectively manage accountability of its vehicles and ground equipment and gain the necessary training and experience to effectively and independently maintain and sustain its vehicles and ground equipment. Id. The acquisition plan explains that the government previously procured the services contemplated here through multiple contracts, including, as relevant here, the contracts for the Afghan Technical Equipment Maintenance Program (ATEMP) under which the protester (as a joint venture partner), see Protest at 62 n.15, provided services to the ANA and PAE’s significant subcontractor provided services to the ANP. AR, Tab 36A, NMS Acquisition Plan, at 10. The acquisition plan states that the requirements in the ATEMP contracts are the most similar to the NMS requirement. Id.

² The RFP stated that past performance was more important than mission capability, which was more important than cost/price. RFP at M.4.1.2. The cost/price factor was significantly more important than small business participation, and non-cost/price factors, when combined, were significantly more important than cost/price. Id.

³ Recent contracts included those performed within three years of the solicitation’s date of issuance. RFP at L.4.1.1.2. As relevant here, a significant subcontractor was one that would perform more than 50% of the CLS work. Id. at L.4.1.1.

and, instead, directed that offerors “shall identify” individual task or delivery orders issued against BCIs. Id. at 4.1.1.1.

The RFP provided that past performance proposals would be evaluated to assess the likelihood of the offeror successfully performing the contract requirements, and assigned confidence ratings.⁴ RFP at M.4.2.1. Additionally, the RFP provided that the agency would evaluate the degree of similarity in scope, magnitude of effort, and complexity of the work performed under identified contracts. Id. at M.4.2.2. As relevant here, the RFP stated that performance risk would be determined at the factor level based on an assessment of the performance record of relevant and recent contracts identified by the offeror and any significant subcontractors. RFP at M.4.2.4.

The mission capability factor included two equally-weighted subfactors: (1) training approach, and (2) management and staffing approach. RFP at L.4.2, L.4.2.2. As relevant here, the management and staffing approach required an offeror to describe its approach to plan, execute, and manage the NMS program. RFP at L.4.2.2. The approach was also required to address phase-in; hiring, training and retaining qualified personnel; utilizing local nationals (LN), other country nationals, and U.S. citizens; and planning, executing, and managing security services during the NMS program. Id. Proposals were evaluated for strengths and weaknesses, risk of unsuccessful performance, and understanding of the PWS. RFP at M.4.3.3.

Regarding cost/price, the RFP required an offeror, and its major subcontractors,⁵ to complete a cost/price summary by CLIN and subCLIN for CPIF,⁶ CPFF,⁷ and cost-with-no-fee CLINs, organized by cost elements--e.g., direct labor, subcontractors, and materials--that supported the offeror’s proposed costs. RFP at L.4.3.6, L.4.3.6.1.2.1. Proposals would be evaluated to determine the total evaluated cost/price to the government by summing the most probable cost for the cost-reimbursable CLINs, and the total proposed price for the fixed-price CLINs.⁸ RFP at M.4.4.1.1. For the cost-

⁴ Confidence was rated, from highest to lowest, as substantial, satisfactory, limited, no, and unknown (neutral). AR, Tab 7, SSA Final Brief, at 12. As relevant here, satisfactory confidence indicated a reasonable expectation that the offeror would successfully perform the required effort, and limited confidence indicated a low expectation. Id.

⁵ A major subcontract for purposes of the cost/price evaluations was one with a total price exceeding 10% of the total price of all the offeror’s cost-type CLINs. RFP at 4.3.6.1.2.1.

⁶ The CPIF CLINs included services for CLS and training and mentoring.

⁷ The CPFF CLINs included services for life support, security, and facilities management and maintenance.

⁸ The subCLINs for cost-reimbursable and fixed-price CLINs would also be evaluated.

reimbursable CLINs, the most probable cost would include an assessment of the proposed costs for reasonableness and realism. Id. at M.4.4.1.2. As relevant here, the realism analysis would include an evaluation of specific elements of the offeror's proposed cost estimate to determine whether the cost accurately reflected the offeror's proposed effort to meet program requirements and objectives. Id. at M.4.4.1.2(a). The RFP stated that the most probable cost would be determined by adjusting an offeror's proposed cost to reflect any additions or reductions to cost elements to realistic levels based on the results of the realism analysis. Id.

On or before the closing date, the agency received five proposals including ANHAM's and PAE's. AR, Tab 5, Source Selection Decision Document (SSDD), at 02. After a source selection evaluation board (SSEB) conducted initial evaluations, the agency conducted discussions with offerors from January 18 to April 11, and requested and received final proposal revisions by April 14. Joint Contracting Officer's Statement/Memorandum of Law (COS/MOL) at 12. After the SSEB completed final evaluations, it provided a final briefing to the source selection authority (SSA). Id. A source selection advisory council (SSAC) also prepared a detailed comparative analysis of proposals and made an award recommendation to the SSA. Id. at 13. The cost team determined that ANHAM's and PAE's costs were realistic given their respective approaches, and made no adjustments to either proposal. AR, Tab 20, SSAC Report, at 010.

The final ratings were as follows:

	ANHAM FZCO	PAE
Past Performance	Limited Confidence	Satisfactory Confidence
Mission Capability	Marginal	Good
Training Approach	Acceptable	Good
Management and Staffing Approach	Marginal	Good
Total Evaluated Cost/Price	\$548,834,543	\$451,606,813
Small Business Participation	Outstanding	Marginal

AR, Tab 5, SSDD, at 03.

The SSA concluded that PAE's higher-rated, lower-priced proposal represented the best value. Id. at 2, 7. In this regard, the agency stated that PAE's proposal, which included four distinguishing strengths and no weaknesses, was significantly advantageous in comparison to ANHAM's proposal, which included a significant weakness under the management and staffing approach subfactor of the mission capability factor based on insufficient staffing of trainers and mentors at the [DELETED]

sites [DELETED].⁹ Id. Additionally, the SSA noted that although ANHAM's small business participation--the least important factor--was superior to PAE's, it did not merit the \$97 million price premium associated with ANHAM's proposal. Id.

Following notice of award and a debriefing, the protester filed this protest.

DISCUSSION

ANHAM argues that the agency's evaluation, conduct of discussions, and best-value determination were flawed. We have reviewed the protester's arguments, and conclude that none furnishes a basis to sustain the protest. We discuss a few relevant examples below.

Mission Capability

ANHAM raises various challenges to the agency's evaluation of ANHAM's mission capability factor. For example, ANHAM contends that the evaluation was flawed because the agency failed to assign ANHAM's proposal strengths under both subfactors of the mission capability factor; that the agency evaluated proposals unequally; and that the agency unreasonably assessed ANHAM's proposal a significant weakness under the management and staffing approach subfactor. See Protest at 42-66; Supp. Protest (.2) at 16-23. We discuss below ANHAM's contention that the agency unreasonably assessed its proposal a significant weakness under the management and staffing approach subfactor for insufficient staffing of trainers and mentors at [DELETED] sites [DELETED].¹⁰ Protest at 48-54.

ANHAM asserts that the agency's assessment of a significant weakness ignored the rationale provided by ANHAM for its proposed staffing. In this regard, ANHAM contends that its proposal, and response to discussions, made clear that ANHAM's proposal provided adequate staffing to train the required student load during the base year; that the number of trainers would be [DELETED]. Protest at 49-52. Additionally, ANHAM contends that based on the terms of the solicitation, the agency did not correctly assimilate the RFP's stated performance goals, which required that the [DELETED]-specific performance goals start at 50% of the work in the base year. Protest at 52-53.

The agency responds that ANHAM's rationale regarding staffing [DELETED] was unreasonable. The agency explains that the solicitation and performance requirements

⁹ The SSA stated that the significant weakness was not offset by the collective strength of ANHAM's proposal. AR, Tab 5, SSDD, at 05.

¹⁰ Because we conclude below that the significant weakness was reasonably assessed, our decision does not include a discussion of ANHAM's remaining challenges to the mission capability factor, which, as stated above, were found to lack merit.

required the training and mentoring activities to be implemented for the entire duration of the contract, and thus, ANHAM's proposed staffing did not demonstrate an adequate understanding of the training requirements by year. COS/MOL at 33-34. The agency also asserts that even if the protester's assumptions regarding the rationale for staffing [DELETED] were reasonable, ANHAM's proposed staffing levels would not have provided the capacity to support other training models required by the contract. Id. at 34. In this regard, the agency provided a detailed explanation as to why the evaluators concluded that ANHAM's approach and revised staffing were viewed as insufficient. Id. Additionally, the agency asserts that ANHAM's response failed to address staffing for mentoring. Id.

The evaluation of an offeror's technical proposal is a matter within the agency's broad discretion and our Office will not substitute our judgment for that of the agency; rather, we will examine the record to determine whether the agency's judgments were reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. ADNET Sys., Inc., B-413033, B-413033.2, Aug. 3, 2016, 2016 CPD ¶ 211 at 7. A protester's disagreement with the agency's judgment does not establish that the evaluation was unreasonable. Jacobs Tech., Inc., B-411784, B-411784.2, Oct. 21, 2015, 2015 CPD ¶ 342 at 6.

We agree with the agency. As explained above, the management and staffing approach subfactor required an offeror to describe its approach to plan, execute, and manage the NMS program, which included training and mentoring services. RFP at L.4.2.2. Here, the record shows that the agency reasonably considered the protester's rationale, and viewed the proposed staffing as "not sufficient to train and mentor all [DELETED] personnel at [the required] sites" [DELETED]. AR, Tab 19, ANHAM Final Evaluation – Mission Capability, at 20. ANHAM's disagreement with the agency's assessment does not establish that the agency conducted an improper evaluation.

Meaningful Discussions

Next, the protester argues that the agency failed to conduct meaningful discussions regarding the significant weakness assessed under the management and staffing subfactor of the mission capability factor. Protest at 67. ANHAM contends that the agency did not meaningfully raise the significant weakness identified in ANHAM's proposal during discussions, and failed to address whether ANHAM's response was sufficient during subsequent rounds of discussions. Id.

Discussions, when held, must be meaningful; that is, they must lead offerors into those areas of their proposals requiring amplification or revision, and may not prejudicially mislead the offeror. Argon ST, Inc., B-401387, Aug. 6, 2009, 2009 CPD ¶ 163 at 4. However, agencies are not required to engage in successive rounds of discussions until all proposal defects have been corrected, nor are agencies required to reiterate concerns that were not alleviated by a firm's proposal revisions. Id. Where an agency engages in initial discussions that lead an offeror to revise its proposal, the agency's

subsequent silence in connection with those proposal revisions during a subsequent round of discussions cannot reasonably be understood as an indication that the agency determined that the initial weakness or deficiency was cured. Id. It is the responsibility of the offeror to ensure that the areas of concern highlighted in discussions are adequately resolved in the offeror's final revised proposal. B&S Transp., Inc., B-402695, July 9, 2010, 2010 CPD ¶ 161 at 6-7.

Here, the record shows that the agency notified ANHAM that its proposal had been assessed a significant weakness based on the "limited personnel available to train and mentor ANDSF personnel" [DELETED]. Tab 21, ANHAM Discussions, at 001. Thus, the agency clearly led ANHAM into the area of its proposal that needed to be addressed and it had no further obligation to comment on proposal modifications submitted during the discussions period. On this record, we find no merit to ANHAM's complaint.

Past Performance

The protester next challenges the agency's evaluation of its own and the awardee's past performance.

An agency's evaluation of past performance is a matter of agency discretion which we will not disturb unless the agency's assessments are unreasonable. Yang Enters., Inc.; Santa Barbara Applied Research, Inc., B-294605.4 et al., Apr. 1, 2005, 2005 CPD ¶ 65 at 5. In this regard, an agency's past performance evaluation may be based on a reasonable perception of a contractor's prior performance, regardless of whether the contractor disputes the agency's interpretation of the underlying facts, the significance of those facts, or the significance of corrective actions. PAE Aviation and Tech. Servs. LLC, B-413338, B-413338.2, Oct. 4, 2016, 2016 CPD ¶ 283 at 6. While consideration of past performance trends and corrective actions is generally appropriate, an agency is not required to ignore instances of negative past performance. The Bionetics Corp., B-405145, B-405145.2, Sept. 2, 2011, 2011 CPD ¶ 173 at 7-8.

As relevant here, to meet the CLS (contractor logistics support) past performance requirement, PAE offered the ATEMP (Afghan Technical Equipment Maintenance Program) contract performed by its significant subcontractor, who would perform [DELETED] on this procurement. The agency concluded that the contract was recent and relevant for CLS for vehicles and ground equipment; and had essentially the same scope, and similar magnitude and complexity as required by the PWS requirements for CLS work. AR, Tab 31, PAE Final Past Performance Evaluation, at 17.

The protester contends that the agency should have assessed higher risk to PAE's past performance proposal because PAE itself did not identify past performance for CLS work at ANA sites. Comments and Supp. Protest (.3) at 27-35. The agency responds that ANHAM's assertion is contrary to the requirements of the RFP. Supp. COS/MOL at 29.

We agree with the agency. As relevant here, the solicitation required offerors or their significant subcontractors to identify up to three recent and relevant contracts for CLS for vehicles and ground equipment. RFP at L.4.1.1. As additionally relevant here, the RFP stated that performance risk would be based on an assessment of the performance record of relevant and recent contracts identified by the offeror and any significant subcontractors. Id. at M.4.2.4. Based on the RFP language, the protester's argument lacks merit. The RFP required contracts showing performance of CLS support generally, and did not distinguish between CLS work performed at ANA or ANP sites. Additionally, because the RFP allowed offerors to identify contracts performed by a significant subcontractor to meet the RFP requirements, as PAE did here, we find the agency's evaluation unobjectionable.

ANHAM next argues that the agency unreasonably excluded from evaluation ANHAM's performance under a contract the protester argues would have had a significant impact on its past performance evaluation and rating. Protest at 30-34.

Here, ANHAM offered contract SPM300-12-D-3571¹¹ to demonstrate its past performance of various PWS activities. After the initial evaluation, the agency concluded that the submitted contract was an IDIQ contract and that ANHAM had not submitted a recent and relevant task order as required by this solicitation. See Protest at 32-33; AR, Tab 15, ANHAM Final Past Performance Evaluation, at 16. Thereafter, the agency engaged in two rounds of discussions with ANHAM regarding this matter. The agency first stated that ANHAM failed to identify a recent and relevant task order for the contract. Id. ANHAM responded that the submitted contract was not a task order, and that all contract functions and requirements were performed under the submitted contract. Id. ANHAM also provided a past performance questionnaire (PPQ) that identified the contract as an "[IDIQ] [f]ixed [p]rice with [e]conomic [p]rice [a]djustment (not task/delivery order)." AR, Tab 18, PPQ for Contract SPM300-12-D-3571, at 2. Based on ANHAM's response, the agency's second evaluation notice informed ANHAM that the contract would not be evaluated. AR, Tab 15, ANHAM Final Past Performance Evaluation, at 16.

As noted above, the RFP specifically provided that offerors "shall not" identify IDIQ contracts as recent and relevant contracts, and instead required them to identify individual task or delivery orders. RFP at L.4.1.1.1. Here, ANHAM's PPQ identified the contract as an IDIQ contract. See AR, Tab 18, PPQ for Contract SPM300-12-D-3571, at 2. ANHAM's contention--essentially that the agency should have made an exception to the solicitation requirements--fails to state a valid basis of protest. See 4 C.F.R. § 21.5(f). Accordingly, we conclude that the agency reasonably excluded the contract from consideration.

¹¹ This contract is described as a U.S. Army Corps of Engineers effort to create and implement an on-the-job training program for Afghan soldiers on basic maintenance of power, water, and HVAC systems. AR, Tab 15, ANHAM Final Past Performance Evaluation, at 6.

Cost Evaluation

Finally, the protester contends that the agency's cost realism evaluation was unreasonable. For example, the protester contends that PAE's proposed staffing and labor hours for CLS at ANA sites were unrealistically low as compared to ANHAM's incumbent proposal. Protest at 63; Comments and Supp. Protest (.3) at 9. The protester also asserts that PAE's low rates would prevent the retention of qualified incumbents. Comments and Supp. Protest (.3) at 10-11. As discussed below, the protester's arguments do not show that the agency's realism analysis was unreasonable.¹²

When an agency evaluates a proposal for the award of a cost-reimbursement contract, an offeror's proposed costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. Federal Acquisition Regulation (FAR) §§ 15.305(a)(1), 15.404-1(d); Rollout Sys., LLC, B-414145, Feb. 24, 2017, 2017 CPD ¶ 104 at 5. Consequently, an agency must perform a cost realism analysis to determine the extent to which an offeror's proposed costs are realistic for the work to be performed. FAR § 15.404-1(d)(1). An agency is not required to conduct an in-depth cost analysis, or to verify each and every item in assessing cost realism; rather, the evaluation requires the exercise of informed judgment by the contracting agency. Cascade Gen., Inc., B-283872, Jan. 18, 2000, 2000 CPD ¶ 14 at 8; see FAR § 15.404-1(c).

An agency's cost realism analysis need not achieve scientific certainty; rather, the methodology employed must be reasonably adequate and provide some measure of confidence that the rates proposed are reasonable and realistic in view of other cost information reasonably available to the agency as of the time of its evaluation. SGT, Inc., B-294722.4, July 28, 2005, 2005 CPD ¶ 151 at 7. Our review of an agency's cost realism evaluation is limited to determining whether the cost analysis is reasonably based and not arbitrary. Hanford Envtl. Health Found., B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 7-8. The pertinent inquiry is not whether an offeror's proposed costs resemble another offeror's proposed costs, but, rather, whether its proposed costs are adequate in light of its unique technical approach. Exelis Sys. Corp., B-407673 et al., Jan. 22, 2013, 2013 CPD ¶ 54 at 7.

The RFP required the offeror and major subcontractors to submit a cost and price worksheet for the cost-reimbursable (CPIF, CPFF, and no-fee) CLINs and fixed-price CLINs with such information as direct labor rates, subcontract, and overhead/indirect

¹² In its various protest submissions, ANHAM raised arguments that are in addition to, or variations of, those discussed below, including cost/price-related assertions that PAE will not comply with Afghan labor law and that PAE's proposed hours were unrealistic when compared to those of PAE's significant subcontractor. See Protest at 59-65; Supp. Protest (.2) at 3-13; Comments and Supp. Protest (.3) at 4-27. We have considered all of ANHAM's assertions, and find no basis to sustain its protest.

rates. RFP at L.4.3.6; L.4.3.6.1.2.1. Additionally, the cost proposals would be assessed for realism by evaluating whether specific elements of the proposed costs were sufficient and accurately reflected the offeror's proposed approach to meet the contract requirements. RFP at M.4.4.1.2(a).

Here, the record shows that the agency evaluated the realism of the CPIF CLINs, which included staffing and labor rates for CLS at ANA sites, and found PAE's proposed cost to be realistic and consistent with its technical approach.¹³ AR, Tab 27, PAE Final Cost/Price Evaluation, at 5-14, 45; AR, Tab 20, SSAC Report, at 007. Prior to determining that PAE's rates were realistic, the agency found PAE's proposed rates for local nationals to be low. Id. at 13. However, based on a review of substantiating data regarding labor rates for local nationals,¹⁴ and a crosswalk comparing PAE's cost/price and mission capability proposal, the SSAC concluded that the differences between offerors' cost/price were due to differences in their proposed approaches.¹⁵ AR, Tab 20, SSAC Report, at 007. On this record, we conclude that the agency's evaluation was consistent with the solicitation, and that ANHAM has not established that PAE's proposed staffing or rates were unreasonable or unrealistic. Additionally, to the extent ANHAM contends that PAE would be unable to hire and retain the incumbent workforce because the awardee's wage rates were lower than the rates offered by ANHAM as the incumbent for this service, see Comments and Supp. Protest (.3) at 9-11; Supp. Comments at 11, we find this argument to be no more than disagreement with the agency's assertion that PAE's approach did not exclusively rely on hiring incumbent

¹³ The agency also analyzed the staffing and hours for the CPFF CLINs, costs-with-no-fee CLINs, overhead and indirect cost for the cost-reimbursable and fixed-price CLINs, and proposed pricing for the fixed-price CLINs, and determined that the prices were not unbalanced. AR, Tab 27, PAE Final Cost/Price Evaluation, at 13-45.

¹⁴ The agency reviewed payroll data from the ATEMP contract currently being performed by PAE's major subcontractor. AR, Tab 27, PAE Final Cost/Price Evaluation, at 13.

¹⁵ In this regard, the SSAC noted that [DELETED]. AR, Tab 20, SSAC Report, at 018.

staff.¹⁶ Based on the record above, we deny ANHAM's challenges to the agency's cost realism evaluation.

The protest is denied.¹⁷

Susan A. Poling
General Counsel

¹⁶ The agency cites to the awardee's [DELETED] hiring process that includes [DELETED]. Supp. COS/MOL at 23, citing AR, Tab 29, PAE Final Evaluation-Mission Capability, at 15-16. The agency also represents that it had no reason to question Team PAE's ability to retain staff where its proposal stated, "[DELETED]." Supp. Legal Memo at 12. Finally, the agency asserts that although the ANA and ANP retain separate locations, ANHAM's attempted distinction between the CLS work required at these sites is unavailing considering the work to be performed at each site is of a similar nature. Id. In our view, the protester's response to the agency regarding these issues is not meaningful and constitutes no more than disagreement.

¹⁷ Based on our conclusions above, we need not address ANHAM's challenge to the award decision since it is premised on the notion that the agency conducted an unreasonable evaluation. See Protest at 72.