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## Decision

**Matter of:** West Sound Services Group, LLC

**File:** B-406583.2; B-406583.3

**Date:** July 3, 2013

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James N. McCormick, Department of the Navy, for the agency.  
Nora K. Adkins, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest that the agency failed to afford the protester meaningful discussions is sustained where the agency did not convey its actual concerns to the protester in a manner that would have enabled the protester to meaningfully respond to the evaluated significant weaknesses in its proposal.
  2. Protest challenging the agency's evaluation of the protester's non-price proposal is sustained where the record does not contain adequate supporting rationale to demonstrate that it properly considered information provided by the protester in its revised proposal.
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### DECISION

West Sound Services Group, LLC,<sup>1</sup> of Austin, Texas, protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. N44255-10-R-5016, issued by the Department of the Navy, Naval Facilities Engineering Command, for base operations support services at various locations throughout the Northwest United States. The protester contends that the agency failed to conduct meaningful discussions, unreasonably evaluated its proposal, and improperly excluded it from the competitive range.

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<sup>1</sup> West is a joint venture of J&J Worldwide Services and EMCOR Government Services.

We sustain the protester’s arguments concerning lack of meaningful discussions. We also sustain the protester’s arguments with regard to the agency’s evaluation of West’s proposal under the technical approach/methods factor.

## BACKGROUND

The solicitation, issued on November 21, 2011, contemplated the award of a fixed-price, indefinite-delivery, indefinite-quantity contract for base operations support services at Navy installations and remote sites located in Washington, Oregon, Idaho, Montana, Wyoming, and Alaska. RFP at 12. The RFP anticipated award on a best-value basis for a 1-year base period, and four 1-year options. Id. The RFP stated that offers would be evaluated on the basis of price and six non-price factors: (1) corporate experience, (2) technical approach/methods, (3) management approach/capability of key personnel, (4) past performance, (5) safety, and (6) small business utilization.<sup>2</sup> RFP Amend. 5 at 8. All non-price evaluation factors were equally rated and when combined, were approximately equal to price. Id.

With regard to the technical approach/methods factor, the solicitation required offerors to address their staffing and methodology for each annex provided in the RFP’s performance work statement. As relevant here, annex 15 was for facilities support, annex 16 was for utilities, and annex 18 was for environmental requirements. These three annexes had the following sub-annexes<sup>3</sup>:

	<b>Annex Number</b>	<b>Annex Name</b>
<b>Annex 15</b>	1501000	Facility Management
	1502000	Facility Investment
	1502010	BUMED <sup>4</sup> Facility Investment
	1502020	Pest Control
	1503030	Integrated Solid Waste
	1503060	Pavement Clearance

<sup>2</sup> Factor 6 contained two equally-rated subfactors: past performance in utilization of small businesses, and small business participation. Id.

<sup>3</sup> The evaluation documents use the term “annex” to refer to the two-digit annexes, and the term “sub-annexes” to refer to the seven-digit annexes. While we acknowledge that each seven-digit annex had independent solicitation requirements, we will refer to the seven-digit annexes as sub-annexes of the overall two-digit annex (i.e., 1501000 is a sub-annex of annex 15).

<sup>4</sup> The Navy Bureau of Medicine and Surgery (BUMED) facility investment requirement is for services at the Naval Hospital Bremerton Facilities.

<b>Annex 16</b>	1600000	Utilities
	1602000	Electrical
	1603000	Natural Gas
	1604000	Wastewater
	1605000	Steam
	1606000	Water
	1607000	Compressed Air
	1609000	Utility Fuel Storage and Distribution
<b>Annex 18</b>	1800000	Environmental

RFP at 6.

The RFP stated that the agency’s evaluation of the technical approach/methods factor would consider whether an offeror proposed adequate staffing levels, and whether the staffing plan shows a reasonable understanding of the requirements, labor quantities, and skills needed to successfully perform and meet the contract performance standards and objectives. Id. at 14. With regard to the past performance factor, the RFP advised that the agency would consider “how well a contractor has performed on relevant projects.” Id. at 16. The solicitation further stated that the agency would consider the degree to which the offeror demonstrates a trend of satisfactory performance on relevant projects. Id. at 17.

The solicitation stated that the Navy would analyze the total price of each proposal to ensure a fair and reasonable price. Id. at 11. For evaluation purposes, an offeror’s total price would be calculated by adding the price for each of the RFP’s ten contract line items (CLINs)<sup>5</sup> to an offeror’s total price in attachment J.M-2, simulated modification.<sup>6</sup> As part of the price evaluation, the Navy anticipated that it would also evaluate and analyze an offeror’s “[a]dditional pricing information” to ensure adequate consideration of full time equivalent (FTE) staff. Id.

The Navy received nine proposals by the initial closing date of February 28, 2012. The agency issued amendments eleven and twelve thereafter, which permitted the nine offerors to submit revised proposals by August 9. All nine offerors, including West, submitted timely revised proposals.

<sup>5</sup> The CLINs addressed work that would be required on a recurring, or non-recurring basis. The odd number CLINs contained the non-recurring services per year (CLIN 0001-base year, CLIN 0003-option year 1, etc.), while the even number CLINs contained the recurring services per year.

<sup>6</sup> Attachment J.M-2 calculated a “simulated modification” price, which was based upon a percentage of the offerors total CLIN pricing. RFP, Attachment J.M-2.

## Initial Evaluation Results

The Navy's technical evaluation team evaluated the non-price proposals, while the agency's price evaluation team evaluated the price proposals. The technical team's evaluation assigned the following ratings to West's initial non-price proposal:

Factor	Rating
Corporate Experience	Acceptable
Technical Approach / Methods	Marginal
Management Approach / Capability of Key Personnel	Marginal
Past Performance	
Relevancy	Relevant
Confidence	Limited Confidence
Safety	Good
Small Business (SB) Utilization	Good
Past Performance in Utilization of SB	Good
SB Participation	Good
Overall Technical Rating	Marginal <sup>7</sup>

Agency Report (AR), Tab D1A, Technical Evaluation, at 4.

As relevant here, the technical evaluation team concluded that West's proposal had one strength related to its key personnel experience and two significant weaknesses related to the technical approach/methods evaluation factor. AR, Tab D1B, Technical Evaluation-West, at 8-9. The first significant weakness related to the evaluation team's finding that West's "FTEs appear significantly low in annex 15 and 18."<sup>8</sup> *Id.* at 8. The second significant weakness related to the team's finding that West failed to provide an "individual approach for accomplishing annex requirements for [the] Utilities sub-annexes, [and the following Facilities Support sub-annexes:] BUMED, Pest Control, Integrated Solid Waste, and Pavement Clearance." *Id.* at 9.

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<sup>7</sup> The source selection advisory council's (SSAC) evaluation subsequently changed the initial overall rating of West's non-price proposal from marginal to acceptable. AR, Tab G1, SSAC Report, at 13.

<sup>8</sup> With regard to the other annexes, the evaluation team concluded that "[a]ll other annex staffing is commensurate with the IGE [independent government estimate]." AR, Tab D1B, Technical Evaluation-West, at 7.

The technical team also assessed the relevance of, and confidence related to, each past performance reference provided by the offerors. AR, Tab D1A, Technical Evaluation, at 3. The technical team found that West's past performance was relevant in terms of size, type, and complexity to the current solicitation, and assigned West a limited confidence rating. AR, Tab D1B, Technical Evaluation-West, at 18. West's limited confidence rating was based upon the technical team's finding of one weakness and one significant weakness. Id. at 19. In this regard, the technical team found that West's most recent past performance review (project 1), which the team found to be very relevant, identified significant deficiencies, and demonstrated a trend of declining performance--from good to acceptable. Id. The technical team also cited a concern regarding a contract performed by [DELETED] that was not cited in West's proposal, but was identified by the agency during a review of the past performance information retrieval system (PPIRS).<sup>9</sup> Id. The team concluded that the quantity and severity of the past performance concerns, as well as the deficiencies in business relations on projects 1 and 3, together with [DELETED] negative past performance information, reflected a negative trend that merited a significant weakness, and an overall limited confidence rating. Id.

The Navy's price evaluation team compared the offerors' total prices to the independent government estimate (IGE). AR, Tab E1, Price Evaluation, at 11. The team also compared the offerors' total prices to each other by calculating the mean and standard deviation of the prices for each annex. Id. at 2. Offerors' prices "within the normal distribution"<sup>10</sup> were assumed to have "given adequate consideration to FTEs." Id. at 52.

The price evaluation team initially concluded that West's total price was the fifth lowest of the nine offerors. Id. at 11. The team also found that West's pricing was higher than the normal distribution for some annexes, but lower for others. Id. at 53-112. Similarly, the price team found that certain of West's annexes contained high FTEs, while others contained low FTEs. Id.

The source selection advisory council (SSAC) reviewed the results of the technical and price teams' evaluations. AR, Tab G1, SSAC Report, at 1. Based upon the evaluation teams' assessments and the SSAC's review of the offerors' proposals, the SSAC recommended that the agency enter into discussions with all nine

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<sup>9</sup> PPIRS is a web-enabled, government-wide application that collects quantifiable delivery and quality past performance information. See Federal Acquisition Regulation (FAR) § 42.1503.

<sup>10</sup> Prices that were within one standard deviation of the mean were considered within the normal distribution. Id.

offerors. Id. at 16. The source selection authority (SSA) concurred with the recommendation of the SSAC. AR, Tab H1, SSA Report, at 1.

### The Navy's Discussions with West

On November 7, the agency issued an evaluation notice to West, which included two enclosures: (1) discussion questions regarding West's price proposal, and (2) discussion questions regarding West's non-price proposal. The discussion questions required offerors to "provide a response to each question," but also stated that the offerors were required to incorporate their responses into their revised proposals.<sup>11</sup> AR, Tab I2, Evaluation Notice, at 1.

With regard to the non-price discussion questions, the Navy notified West of significant weaknesses in its proposal. For example, West was advised that its staffing appeared low in annex 15 and 18.<sup>12</sup> Id., Enclosure 2, Non-Price Discussion Questions, at 1. With regard to the price discussion questions, the Navy submitted several discussion questions to West. AR, Tab I2, Evaluation Notice, Enclosure 1, Price Discussion Questions, at 1-2. Generally, the price questions notified West of the places in its proposal where its pricing appeared higher or lower than the normal distribution. Id. The questions also requested that West "ensure adequate consideration was given to FTEs" for those annexes found to have pricing outside of the normal distribution.<sup>13</sup> Id.

On November 20, West submitted separate revised non-price and price proposals. In addition to these submissions, West included a 59-page document entitled "Response to Items for Discussions." AR, Tab C3, West Final Proposal Revision, Response to Items for Discussions.

### Results of the Second Evaluation

The agency's technical evaluation team's assessment of West's revised non-price proposal resulted in the following ratings:

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<sup>11</sup> In response to an offeror's question, the Navy also clarified that revised proposals may not exceed the solicitation's initial page limitations. RFP Amend. 13, Attachment J.L-2, Pre-Proposal Inquiry No. 396.

<sup>12</sup> The agency's evaluation documents use the terms FTEs and staffing level interchangeably; these terms are used synonymously in our decision.

<sup>13</sup> In some instances, the agency expressly advised West that its proposed FTEs were too high. The discussion questions did not advise West that its proposed FTEs were too low with regard to any annex.

<b>Factor</b>	<b>Rating</b>
Corporate Experience	Acceptable
Technical Approach/Method	Marginal
Management Approach / Capability of Key Personnel	Acceptable
Past Performance	
Relevancy	Relevant
Confidence	Limited Confidence
Safety	Good
Small Business (SB) Utilization	Good
Past Performance in Utilization of SB	Good
SB Participation	Good
Overall Technical Rating	Acceptable

AR, Tab D2A, Final Technical Evaluation, at 4.

With regard to the technical approach/methods factor, the technical evaluation team found that West's revised proposal failed to make significant changes and concluded that the two significant weaknesses remained. AR, Tab D2B, Final Technical Evaluation-West, at 7-8. In this regard, the team found that it could consider only a small portion of West's revised proposal because most of the protester's discussion responses, contained in its 59-page supplement to its revised proposal, exceeded the solicitation's page limitation. Id. With regard to past performance, the team found that West's revised proposal did not present compelling evidence that warranted removing the significant weakness or changing the past performance rating. Id. at 19.

The price evaluation team found that West's revised price was now the second-lowest among the nine offerors. AR, Tab E2, Final Price Evaluation, at 8. The price team again found West's proposed prices higher than the normal distribution for some annexes, and lower for others. Id. at 39-147. Similarly, with regard to FTEs, the price team found certain annexes to contain high FTEs, while others contained low FTEs. Id.

The SSAC's final evaluation of the offerors' proposals reviewed the technical and price teams' evaluations. Due to concerns with the IGE, the SSAC created a table to compare the offerors' proposed FTEs for each annex. AR, Tab G2, Final SSAC Report, at 5-6. As relevant here, the SSAC's analysis of the recurring work found that West proposed low FTEs for ten annexes. <sup>14</sup> Id. at 6. For the technical

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<sup>14</sup> We note for the record that the SSAC's table conflicts with both the initial and final price evaluation team's assessment of FTEs. In this regard, the price team found that West had six recurring work annexes with low FTEs. In addition, the  
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approach/methods factor, the SSAC concluded that West was “advised of the Government’s staffing concerns during discussions,” but that its revised proposal was “still considered low in overall FTEs despite revisions.” Id. at 10. As a result, the SSAC recommended that West be eliminated from the competitive range. Id.

The SSA reviewed the evaluations of the technical and price teams, as well as the assessment and recommendation of the SSAC. The SSA noted that West’s technical proposal was ranked seventh-lowest amongst the nine offerors, but proposed the second-lowest price. AR, Tab H2, Final SSA Report, at (unnumbered) 3, 7. The SSA further noted that although the agency’s discussion questions addressed concerns regarding West’s “low staffing levels,” West’s revised proposal continued to offer the lowest number of FTEs. Id. at 6.

Specifically, the SSA noted that West’s FTEs were more than one standard deviation below the mean in ten of eighteen annexes, and noted that nothing in West’s technical or management approach addressed innovations or improvements to explain how West could perform at such reduced staffing levels. Id. As a result, the SSA, like the SSAC before it, concluded that West’s proposal was no longer among the most highly-rated proposals being considered for award, and should be removed from the competitive range because “strong technical competition is available at a modest price increase above West’s proposal.” Id. at 7. Along with West, the agency excluded four other offerors from further consideration.<sup>15</sup> Id. at 8.

On January 23, 2013, the Navy informed West that its proposal had been eliminated from the competitive range. After receiving a debriefing, West filed an agency-level protest with the Navy. The agency denied West’s protest on March 13. West filed a protest with our Office on March 25.

## DISCUSSION

In its protest, West raises numerous arguments with regard to the exclusion of its proposal from the competitive range.<sup>16</sup> Primarily, West contends that the agency

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annexes with low FTEs identified by the price team are not the same annexes the SSAC concluded had low FTEs. We cannot find an explanation for this discrepancy in the contemporaneous record--much of which has been redacted on the basis that the agency was only required to provide relevant portions of its evaluation record.

<sup>15</sup> The agency advised that it intended to conduct a second round of discussions with the remaining four offerors. AR, Tab H2, SSA Report, at 8.

<sup>16</sup> Although we do not address all of West’s arguments, we have fully considered each of them; to the extent its arguments are not specifically discussed, we deny (continued...)

failed to engage in meaningful discussions and unreasonably evaluated its non-price proposal. As set forth specifically below, West argues that the agency failed to reasonably alert West of the agency's concerns regarding two significant weaknesses identified in West's proposal. West also argues that the agency unreasonably failed to consider information contained in West's revised proposal that responded to a concern identified by the agency in discussions.

### Meaningful Discussions

First, West argues that the Navy failed to provide meaningful discussions because the agency's discussion questions did not address the agency's concerns regarding the two significant weaknesses identified in West's initial proposal. For the reasons discussed below, we agree.

It is a fundamental principle of negotiated procurements that discussions, when conducted, must be meaningful; that is, discussions must identify deficiencies and significant weaknesses in an offeror's proposal that could reasonably be addressed so as to materially enhance the offeror's potential for receiving award. PAI Corp., B-298349, Aug. 18, 2006, 2006 CPD ¶ 124 at 8; Spherix, Inc., B-294572, B-294572.2, Dec. 1, 2004, 2005 CPD ¶ 3 at 13; FAR § 15.306(d). An agency may not mislead an offeror through the framing of a discussion question into responding in a manner that does not address the agency's actual concerns, or otherwise misinform the offeror concerning a problem with its proposal. Metro Mach. Corp., B-281872 et al., Apr. 22, 1999, 99-1 CPD ¶ 101 at 6.

Here, the agency's evaluation of West's initial proposal identified two significant weaknesses under the technical approach/methods evaluation factor. With regard to the first significant weakness, the agency concluded that West's proposal failed to provide an individual approach for each of the eight sub-annexes under annex 16-Utilities, and failed to provide an individual approach for four of the six sub-annexes under annex 15-Facilities (i.e., BUMED, Pest Control, Integrated Solid Waste, and Pavement Clearance). With regard to the second significant weakness, the agency concluded that West's proposed FTEs were low in annex 15 and 18.

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those aspects of West's protest. For example, West asserts that the agency failed to conduct meaningful discussions with West regarding the small business past performance subfactor. We disagree. Based upon our review of the record, we find that the agency appropriately apprised West of its concerns, which West failed to address in its final revised proposal.

### Significant Weakness 1: Individual Approach for Sub-Annexes

West argues that the Navy failed to conduct meaningful discussions regarding West's sub-annex approach under annexes 15 and 16. The protester contends that although the agency directed it to amplify its approach for four of the six sub-annexes under annex 15, the agency made no mention of any concerns with West's approach to the eight sub-annexes under annex 16. For this reason, West argues that by pointing out problems with its approach to addressing the requirements of annex 15, but saying nothing about annex 16, the agency's discussion questions here were inadequate and misleading.<sup>17</sup> We agree.

To address the first significant weakness, the agency's discussion question requested that West "explain the method and approach proposed to accomplish the requirements of the BUMED, Pest Control, Integrated Solid Waste, and Pavement Clearance annexes." AR, Tab I2, Evaluation Notice, Enclosure 2, Non-Price Discussion Questions, at 1. The discussion questions made no mention of any issues regarding a method or approach to any of the eight sub-annexes under annex 16. Id. In response to the discussion questions, West revised its proposal regarding annex 15. In its final evaluation, the agency concluded that West's revised proposal did not address the annex 15 and 16 requirements, and that the significant weakness remained.<sup>18</sup> AR, Tab D2B, Final Technical Evaluation-West, at 8.

During the course of this protest, the Navy acknowledged that its question to West "may have omitted by typing error" any mention of the utilities requirements, under the annex 16 sub-annexes. Agency Response to Comments (May 13, 2013), at 8. The agency contends, however, that its question about annex 15 should have been sufficient to advise West of the agency's concerns about annex 16 because the question also "clearly reminded the offeror that they must discuss their approach for each annex." Id. at 7. In essence, the agency argues that, because the question advised the protester of the need to address--in detail--four of the six sub-annexes under annex 15, the protester was on notice that it should have also addressed in detail the eight sub-annexes under annex 16. The Navy also asserts that its price discussion questions should have also put West on notice of issues with its utility annex.

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<sup>17</sup> We note for the record that the Navy also did not mention West's approach under any of the other annexes, which led West to correctly conclude that there were no perceived problems with these annexes.

<sup>18</sup> The agency's evaluation of West's revised proposal with regard to annex 15 is addressed in a separate section of this decision--Evaluation of West's Proposal.

Based upon our review of the record, we find that the specific nature of the agency's questions misled West to respond only to concerns about annex 15, and not about annex 16. We do not agree with the agency that its reference to an individual approach for four sub-annexes under annex 15 could have alerted West to the agency's concerns regarding West's approach to the eight sub-annexes under annex 16. We also have no basis to conclude that the Navy's price discussion questions notified West of the agency's concerns with regard to utilities under the technical approach/methods factor. These questions, which alerted West to its apparent high or low prices and requested West ensure adequate consideration of its FTEs, did not address West's approach to meeting the annex requirements. Accordingly, we sustain the protest on this basis.

### Significant Weakness 2: FTEs/Staffing Level

West also argues that the Navy failed to conduct meaningful discussions regarding its concern with West's proposed FTEs. The protester contends that although the agency advised West that its proposed FTEs were low in annex 15 and 18, the agency failed to notify it with regard to the other annexes it had determined to be low. In this regard the agency's decision to eliminate the protester's proposal from the competitive range was based on a finding that the protester had proposed low FTEs in ten annexes. See AR, Tab H2, SSA Report, at (unnumbered) 6. West argues that the specific nature of the agency's questions about annex 15 and 18 misled it into believing that its proposed FTEs for annexes other than 15 and 18 were adequate.

In response, the Navy asserts that West was reasonably alerted to the agency's concerns about low FTEs in seven of the ten annexes considered low by the Navy-- even though the Navy acknowledges that to reach this conclusion requires reviewing the overall mix of both price and non-price discussion questions. With regard to the remaining three annexes, the Navy argues it was not required to conduct discussions about these annexes because the proposed FTEs were not found to be low until the agency's second evaluation.

As discussed above, the agency's initial technical evaluation concluded that West proposed low FTEs for annexes 15 and 18. AR, Tab D1b, Technical Evaluation- West, at 6-7. The technical evaluation team also found that "[a]ll other annex staffing is commensurate with the IGE." Id. at 7. The price evaluation team concluded that West's proposed FTEs were low for six recurring annexes: 1502000, 1503030, 1503060, 1603000, 1607000, and 1609000. AR, Tab E, Price Evaluation, at 59-101. The SSAC initial evaluation did not conduct an assessment of West's proposed FTEs.

The agency's non-price discussion questions, for the technical approach/method factor, stated that "Annex 15 and 18 proposed staffing appears low when compared to the RFP requirements for these annexes. Please confirm your staffing is

sufficient to comply with the solicitation's scope." AR, Tab I2, Evaluation Notices, Enclosure 2, Non-Price Discussion Questions, at 1. The price discussion questions notified the protester of each annex where the agency found its proposed price was outside of the normal distribution, that is, the annex pricing appeared high or low. For the recurring work annexes with pricing outside the normal distribution, the agency also requested that West "ensure that adequate consideration was given to FTEs." Id., Enclosure 1, Price Discussion Questions, at 1-2.

West's revised proposal modified its proposed FTE levels for some, but not all annexes. See AR, Tab C3, West Revised Proposal, Full Time Equivalent Worksheet, at 1-4. The technical evaluation team concluded that West's revised proposal failed to make significant changes to its FTE levels. AR, Tab D2B, Final Technical Evaluation-West, at 7. The price evaluation team concluded that West's revised proposal continued to offer low FTEs for the same six recurring work annexes as its initial proposal.<sup>19</sup> AR, Tab E2, Final Price Evaluation, at 70-128. The SSAC's assessment of West's revised proposal found that ten annexes offered low FTEs: 1501000, 1502000, 1503060, 163000, 1604000, 1605000, 1606000, 1607000, 1609000, and 1800000. AR, Tab G2, Final SSAC Report, at 6.<sup>20</sup> As result, the significant weakness assessed for West's initial proposal remained.

Based upon the record, we agree with the agency that West was reasonably alerted about the agency's concerns with low FTEs in seven of the ten annexes as set forth in greater detail below. First, the agency expressly stated that it was concerned with low FTEs in annex 15 and 18. Thus, this concern alerted West to problems with four of the ten annexes the SSAC ultimately concluded offered low FTEs: 1501000, 1502000, 1503060, and 1800000. Second, we agree with the Navy that the price discussion questions lead West into the area of its proposal where the Navy had concerns about low FTEs under 1603000, 1607000, and 1609000. Specifically, these questions advised that the overall price for these sub-annexes "appears low," and requested that the protester "[r]eview proposed Sub-LIN as well as supporting prices . . . and ensure that adequate consideration was given to FTEs." AR, Tab I2, Evaluation Notice, Enclosure 1, at 2. Accordingly, we think the agency reasonably advised West of seven of the ten annexes where it had concerns with low FTE levels. See Insignia-Spectrum, LLC, B-406963.2,

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<sup>19</sup> The agency redacted part of West's price evaluation. It is not possible for us to know if there were other annexes with low or high pricing (or FTEs).

<sup>20</sup> Nothing in the record reconciles the difference between the price evaluation and the SSAC's evaluation with regard to low FTEs. As previously noted, the six annexes found low as a result of the price evaluation are not the same annexes the SSAC concluded had low FTEs. Thus, we must assume that the SSA's reference to ten of eighteen annexes came from the SSAC's evaluation.

Sept. 19, 2012, 2012 CPD ¶ 304 (in order for discussions to be meaningful, the agency need only lead an offeror into the areas of its proposal requiring amplification or revision).

For the final three annexes, 1604000, 1605000, and 1606000, we see no basis in the record to conclude that the Navy advised West of its concerns. The Navy argues that it was not required to discuss these three remaining annexes with West, since the agency had not evaluated these annexes as containing low FTEs until its evaluation of revised proposals. The record shows, however, that the protester did not revise its proposed FTEs for these annexes. Where, as here, an agency identifies new concerns during a post-discussions reevaluation, and those concerns would have been required to be raised had they been identified before discussions were held, the agency is required to reopen discussions in order to raise the concerns with the offeror for discussions to be meaningful. Ewing Constr. Co., Inc., B-401887.3, B-401887.4, April 26, 2010, 2010 CPD ¶ 108 at 3.

Moreover, the documents provided to our Office with regard to the initial and final evaluation of these annexes were heavily redacted. Based on the record provided by the agency, we cannot determine whether (or when) the agency concluded that these three annexes had low FTEs. Although an agency is not required to retain every document generated during its evaluation of proposals, the agency's evaluation must be sufficiently documented to allow our Office to review the merits of a protest. Supreme Foodservice GmbH, B-405400.3 et al., Oct. 11, 2012, 2012 CPD ¶ 292 at 10. Thus, for these three annexes, we conclude that the agency failed to provide meaningful discussions.<sup>21</sup>

In sum, we conclude that West was advised of low FTEs for the four annexes raised in the non-price discussion questions, and the three annexes raised in the price discussion questions (1603000, 1607000, 1609000). These questions address only seven of the ten annexes cited to as the basis for the agency's significant weakness and serious concern with regard to West's low FTEs. Accordingly, we find that the agency's discussion questions did not properly alert West to the agency's concerns with its low FTEs, and we sustain the protest on this basis.

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<sup>21</sup> We also note that the contemporaneous documentation does not explain whether the agency's comparative assessment of offerors' FTE levels, based upon a mean and standard deviation calculation, considered the differences in each offeror's individual technical approach/methods in arriving at its conclusion that West proposed low FTEs. See Exelis Systems Corp., B-407111 et al., Nov. 13, 2012, 2012 CPD ¶ 340 at 12-13 (protest sustained where an agency evaluated offerors' proposed staffing levels, with regard to the total number of individuals proposed, but ignored the differences in the offerors' individual staffing plans).

## Evaluation of West's Proposal

Next, West contends that the Navy unreasonably evaluated its revised proposal under the technical approach/methods factor, regarding West's approach to annex 15. The protester also argues that the agency unreasonably evaluated its past performance.

In reviewing a protest challenging an agency's evaluation of proposals, our Office will not reevaluate proposals but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. While we will not substitute our judgment for that of the agency, we will question the agency's conclusions where they are inconsistent with the solicitation criteria, undocumented, or not reasonably based. DRS ICAS, LLC, B-401852.4, B-401852.5, Sept. 8, 2010, 2010 CPD ¶ 261 at 4-5 (sustaining a protest where the agency's evaluation was not reasonable and consistent with the solicitation).

### Technical Approach/Methods

As discussed above, the Navy's discussion questions regarding the technical approach/methods factor directed West to explain its proposed approach to accomplish the requirements of the BUMED, Pest Control, Integrated Solid Waste, and Pavement Clearance sub-annexes of annex 15. In responding to the agency's questions, West submitted a revised proposal, which responded to the agency's concern in two ways. First, West replaced an exhibit in its revised proposal with a new exhibit entitled, sub-annex methodology, which provided information regarding the four annex 15 sub-annexes identified in the discussion questions. AR, Tab C3, West Revised Proposal, Exhibit II.2.4.4-2, Sub-Annexes Methodology, at 19. As requested by the agency, West listed this exhibit in its summary of changes document and highlighted the text in its revised proposal. Id., Table of Contents, at 1; Id., Exhibit II.2.4.4-2, Sub-Annexes Methodology, at 19. Additionally, West provided further responses to the agency's discussion question in a 59-page supplement to its revised proposal, discussed above, which included a 25-page response to the agency's concern regarding annex 15. Id., Response to Items for Discussions, at 1-59.

The Navy's evaluation of West's revised proposal concluded that West failed to address the agency's concern regarding its approach to the annex 15 sub-annexes because only a small portion of West's 59-page supplement--concerning the BUMED annex--could be considered, as the supplement caused the revised proposal to exceed the page limitations set forth in the RFP. AR, Tab D2B, Final Technical Evaluation-West, at 8. West argues, and the Navy does not specifically dispute, that the agency's review of the protester's revised proposal focused exclusively on the 59-page supplement, and did not consider its revisions to the

proposal itself--specifically, the revised exhibit discussed above. See Supp. AR at 15-16.

Based upon our review of the agency's evaluation, we find that the agency unreasonably failed to consider West's revised proposal with regard to the annex 15 sub-annexes. While we agree that the agency properly did not consider the information contained in the 59-page supplement to West's revised proposal that exceeded the proposal page limit,<sup>22</sup> there is nothing in the record to show that the agency evaluated the revised exhibit included in West's proposal within the page limit. In sum, based on the contemporaneous record provided by the agency, we cannot conclude that the Navy's evaluation of West's technical approach/methods factor was reasonable.

### Past Performance

Finally, West challenges the Navy's evaluation of its past performance. Specifically, as set forth below, West argues that the SSA improperly considered negative past performance information related to a contract that the evaluation team concluded was not relevant to the effort at issue here.

As discussed above, the technical evaluation team identified a PPIRS reference for [DELETED] that had not been listed in West's proposal. AR, Tab D1B, Technical Evaluation-West, at 18. The technical evaluation team concluded that although the reference was "small in size and not relevant to the solicitation," the reference nonetheless reflected very low ratings and a contracting officer who "Would Not" hire [DELETED] again due mostly to communication issues. Id. Because the evaluation team decided to consider this information on the grounds that communications (business relations) is a factor in all contracts, the team noted that this reference, along with the ratings for projects 1 and 3, "established a trend of weakness in business relations." Id.

The team's overall past performance evaluation concluded that West's most recent past performance review (Project 1), was very relevant to the solicitation, identified significant deficiencies, and demonstrated a descending rating trend from Good to Acceptable. Considering the quantity and severities of the issues regarding Project 1, as well as deficiencies in business relations on Projects 1, 3, and the PPIRS reference for [DELETED], the team found enough of a trend to establish a significant weakness. Id. at 19.

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<sup>22</sup> The RFP advised that the page limits provided for both the price and non-price proposals would be strictly enforced, "[a]ny pages submitted in excess of the page limitations will not be reviewed and any data or material they contain will not be considered." Id. at 10, 12.

With regard to past performance, the SSA's decision noted that West's first past performance reference (Project 1), as well as the PPIRS reference for [DELETED], "evidence[d] a sometimes difficult relationship with the Government and a degree of poor contract performance on two relevant contract[s] that must be considered when assessing the expectation of successful future performance." AR, Tab H2, Final SSA Report, at (unnumbered) 7.

West argues that the agency failed to reasonably consider the PPIRS reference for [DELETED]. As relevant here, the solicitation defined relevant contracts under the corporate experience factor as "[a] contract of similar size (dollar value), scope (type of work), complexity (degree of difficulty and technology), and contract type (IDIQ)." RFP Amend. 5 at 12. The solicitation further explained that "contracts which are not relevant will be considered; however, they will be determined less relevant and assigned lower ratings." Id.

Here, the technical team concluded that the PPIRS reference for [DELETED] was not relevant but considered the negative information about [DELETED] because it found that business relations is a factor in all contracts. While the record clearly shows that the SSA labeled the PPIRS reference for [DELETED] "relevant"--in contrast to the technical team, which labeled it not relevant--the record is not clear about whether the SSA disagreed with the technical team.<sup>23</sup>

On the other hand, given the negative past performance information provided in the very relevant performance review of West under Project 1, it is also unclear how West has been prejudiced by the SSA's reliance on additional negative past performance information the technical team labeled not relevant, but nonetheless considered.

As a result, we deny this portion of West's challenge. Nonetheless, since we sustain West's protest on other grounds and recommend the reopening of discussions, the Navy may want to consider whether [DELETED] PPIRS reference

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<sup>23</sup> In this regard, there is nothing in the record concerning the SSA's rationale for the conclusion that the PPIRS reference for [DELETED] is relevant; further our review of the record has not uncovered any documentation to support the SSA's decision to view this PPIRS reference differently than the evaluators viewed it. While source selection officials may reasonably disagree with the evaluation ratings and results of lower-level evaluations, they are nonetheless bound by the fundamental requirements that their independent judgments be reasonable, consistent with the stated evaluation factors, and adequately documented. AT&T Corp., B-299542.3, B-299542.4, Nov. 16, 2007, 2008 CPD ¶ 65 at 16; AIU N. Am., Inc., B-283743.2, Feb. 16, 2000, 2000 CPD ¶ 39 at 8-9.

was given appropriate weight in the SSA's decision to eliminate West from the competitive range.

In conclusion, we note that this protest raises a close call on the question of prejudice--a necessary element of any successful protest. As discussed above, the protester's proposed price in this competition was the second lowest among nine offerors at the end of the second evaluation. In light of the possibility for West to improve its technical evaluation ratings had it been given meaningful discussions, and in light of its overall price ranking, we think that there is a reasonable possibility the protester was prejudiced by the agency's errors. See McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see also Statistica, Inc. v. Christopher, 102 F.3d 1577, 1681 (Fed. Cir. 1996). Accordingly, we sustain the protest.

#### SUMMARY AND RECOMMENDATION

For the reasons discussed above, we conclude that the Navy unreasonably excluded West's proposal from the competitive range after it failed to provide meaningful discussions, and unreasonably evaluated West's non-price proposal. In this regard, the agency's discussions misled West regarding its technical approach, and were not meaningful regarding West's proposed FTE levels. The agency's evaluation also failed to consider information provided in West's revised proposal relating to West's technical approach.

We recommend that the Navy reopen discussions, accept revised proposals, and make a new competitive range decision that adequately documents the comparative merits of the proposals and the agency's rationale. We also recommend that the agency reimburse West's costs of filing and pursuing the protest, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (2013). In accordance with section 21.8(f) of our Regulations, West's claim for such costs, detailing the time expended and the costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision.

The protest is sustained.

Susan A. Poling  
General Counsel