



Decision

Matter of: SOS International, LLC

File: B-422323

Date: April 24, 2024

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Dawn E. Stern, Esq., Christie M. Alvarez, Esq., and Andrew W. Current, Esq., DLA Piper LLP, for the protester.

Anne B. Perry, Esq., Jonathan S. Aronie, Esq., Katie A. Calogero, Esq., and Daniel J. Alvarado, Esq., Sheppard, Mullin, Richter & Hampton LLP, for CACI, Inc.--Federal, the intervenor.

ChristinaLynn E. McCoy, Esq., Ronald M. LaRocca, Esq., and Sharon E. Chamberlain, Esq., National Security Agency, for the agency.

Heather Self, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's conduct of discussions is denied where the agency was not required to advise protester of weaknesses that did not rise to the level of significant weaknesses or deficiencies.
 2. Protester's contention that the agency unreasonably evaluated the protester's proposal is denied where the agency's evaluation was reasonable and consistent with the solicitation's evaluation criteria.
 3. Protest that the agency disparately evaluated proposals is denied where the record shows the differences in evaluations resulted from differences in the proposals.
-

DECISION

SOS International, LLC (SOSi), of Reston, Virginia, protests the award of a contract to CACI, Inc.--Federal (CACI), of Chantilly, Virginia, under request for proposals (RFP) No. H98230-21-R-0048, issued by the National Security Agency (NSA) for language analyst services. The protester challenges the agency's conduct of discussions, evaluation of proposals, and best-value tradeoff source selection.

We deny the protest.

BACKGROUND

On April 27, 2022, using the procedures of Federal Acquisition Regulation (FAR) part 15, the agency issued the solicitation seeking proposals for the provision of 640,000 labor hours of language analyst services to support the NSA's Directorate of Operations and Cybersecurity Directorate. Agency Report (AR), Tab 81, RFP at 1, 3; Contracting Officer's Statement (COS) at 1.¹ The solicited services are currently being performed by CACI. COS at 1. The solicitation contemplated award of a single cost-plus-award-fee level-of-effort contract with a 1-year base period and four 1-year option periods. RFP at 12, 115.

The solicitation provided that award would be made on a best-value tradeoff basis, with the combined non-cost factors being significantly more important than cost. RFP at 125. With respect to cost, the solicitation provided the agency would conduct a cost realism analysis, develop a most probable cost, and assess overall cost for reasonableness. *Id.* at 136. The solicitation established three non-cost evaluation factors, which listed in decreasing order of importance were: (1) management; (2) ability to staff; and (3) small business participation. *Id.* at 129, 132. The management factor comprised three subfactors: (i) program management; (ii) talent management; and (iii) mission essential services plan. *Id.* Each of the three management subfactors included a number of specific criteria that would be evaluated. *Id.* at 133-134.

The solicitation explained that for all but one of the non-cost factors and subfactors, the agency would assign an adjectival rating of outstanding, good, acceptable, marginal, or unacceptable. RFP at 129-132. The mission essential services plan subfactor would be assessed on an acceptable/unacceptable basis only. *Id.* at 131. The solicitation further explained that for the individual criteria under the management subfactors, "each individual criterion" would be appraised as being a significant strength, strength, meets standard, weakness, significant weakness, or deficiency. *Id.* For example, under the talent management subfactor of the management factor, the solicitation included four specific criteria that would be evaluated, which were designated as 3.2.1, 3.2.2, 3.2.3, and 3.2.4. *Id.* at 134. Under the solicitation's evaluation scheme, the agency would denote each criterion 3.2.1 through 3.2.4 as a strength, weakness, *etc.*, while assigning the overall talent management subfactor an adjectival rating of good, acceptable, *etc.* for each proposal.²

¹ Our citations use the Adobe PDF pagination of documents. Citations to the RFP are to the final conformed version of the solicitation produced by the agency at Tab 81 of its report.

² The solicitation refers to both the factor and subfactor level adjectival assessments of good, acceptable, *etc.*, and the criterion level appraisals of strength, weakness, *etc.* as "ratings." RFP at 129-132. For clarity, we use the term "rating" to apply only to the factor and subfactor level adjectival assessments and use the term appraisal to refer to the criterion level assessments.

The solicitation defined each adjectival rating, as well as the individual criterion designation. Relevant here, the solicitation defined the individual criterion designation of “weakness” as a “flaw in the proposal that increases the risk of unsuccessful contract performance.” RFP at 131. The solicitation defined the adjectival rating of “acceptable” as a proposal that “meets requirements and indicates an adequate approach and understanding of the requirements, and risk of unsuccessful performance is no worse than moderate.” *Id.* at 129.

The agency received four proposals, including those submitted by the protester and the awardee. AR, Tab 92, Source Selection Decision (SSD) at 3. The agency conducted discussions with and received final revised proposals (FPRs) from all four offerors. *Id.* at 4. The evaluators assessed the protester’s and awardee’s FPRs as follows:

	SOSi	CACI
MANAGEMENT	ACCEPTABLE	GOOD
Program Management	Acceptable	Good
Talent Management	Good	Outstanding
Mission Essential Services Plan	Acceptable	Acceptable
ABILITY TO STAFF	GOOD	OUTSTANDING
SMALL BUSINESS PARTICIPATION	OUTSTANDING	OUTSTANDING
MOST PROBABLE COST	\$483,247,195	\$500,820,890

Id. at 5. Based upon the evaluations and a comparative assessment of the proposals, the source selection authority (SSA) found that “CACI’s proposal represent[ed] the best overall value to the Government,” and selected CACI for contract award. *Id.* at 13. After being notified of the award decision and receiving a debriefing, SOSi filed this protest with our Office.

DISCUSSION

The protester challenges the agency’s conduct of discussions as well as the evaluation of proposals and the resulting best-value tradeoff decision. SOSi raises other collateral issues to those discussed in this decision. While our decision does not address every argument or variation thereof, we have considered them all and find that none provides a basis to sustain the protest.

Conduct of Discussions

The protester argues that the agency conducted discussions that were misleading and not meaningful when NSA told SOSi that no weaknesses had been identified in the firm’s proposal despite the evaluators having assessed a number of concerns in the proposal. See *generally* Protest at 19-23. The agency responds that the identified concerns did not warrant “elevation to a [w]eakness,” and that even assuming the concerns could be considered weaknesses, agencies are required to disclose only significant weaknesses and deficiencies during discussions. Memorandum of Law (MOL) at 7, 9.

As a general matter, discussions with offerors in the competitive range must identify “at a minimum . . . deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond.” FAR 15.306(d)(3). When an agency engages in discussions with an offeror, the discussions must be “meaningful,” that is, sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision in a manner to materially enhance the offeror’s potential for receiving award. FAR 15.306(d); *Apptis Inc.*, B-403249, B-403249.3, Sept. 30, 2010, 2010 CPD ¶ 237 at 4. Further, an agency may not mislead an offeror--through the framing of a discussion question or a response to a question--into responding in a manner that does not address the agency’s concerns, or misinform the offeror concerning a problem with its proposal or about the government’s requirements. *SeaTech Security Solutions; Apogee Group, LLC*, B-419969.6, B-419969.7, Apr. 21, 2023, 2023 CPD ¶ 104 at 11. To satisfy the requirement for meaningful discussions, however, an agency need not “spoon-feed” an offeror as to each and every item that could be revised to improve an offeror’s proposal. *Id.* at 11-12.

As discussed above, the management factor comprised three subfactors, which together, included a total of nine evaluation criteria. The record shows that, for the nine criteria, the evaluators assessed SOSi’s proposal as meriting a “strength” for three of the criteria and a “meets standard” for the other six. AR, Tab 68, SOSi Management Evaluation Report (Eval. Rpt.) at 2-3. The evaluators did not assess a “weakness,” “significant weakness,” or “deficiency” to any aspect of SOSi’s proposal under the management factor. *Id.* The evaluators, however, did note ten areas of “concern” that could “increase the risk of unsuccessful performance.” *Id.* at 2-4. The agency assigned SOSi’s proposal ratings of “acceptable,” “good,” and “acceptable” for the program management, talent management, and mission essential services plan subfactors, respectively, and assigned an overall rating of “acceptable” for the management factor. *Id.*

In line with the evaluators’ findings, the record reflects that the agency’s discussions letter and evaluation notices to SOSi indicated that no “significant weaknesses” were identified in the protester’s proposal generally, and that no “significant weaknesses” or “deficiencies” were assessed under either the management or small business participation factors specifically. AR, Tab 48, SOSi Discussions Letter at 1; Tab 49, SOSi Evaluation Notices at 1. The agency’s written discussions, however, did identify issues under the ability to staff factor and the cost factor that SOSi should address in the firm’s FPR. *Id.* Additionally, as part of the discussions process, the protester asked the agency several questions. Relevant here, SOSi asked the agency: “Has the Government identified any weaknesses in SOSi’s proposal?” AR, Tab 54, Email Exchanges between SOSi and Agency at 24. To which the NSA responded: “The Government did not identify any weaknesses in the Offeror’s proposal.” *Id.*

The protester maintains that despite the ten issues identified in its proposal under the management subfactor being labeled as concerns, the issues were really weaknesses because the evaluators’ description of the concerns as issues that “may increase the

risk of unsuccessful performance” matches the solicitation’s definition for the criterion appraisal of weakness. Protest at 12, *comparing* RFP at 131 *with* AR, Tab 68, SOSi Management Eval. Rpt. at 2-3. Thus, the protester contends, the agency’s response that there were no weaknesses in SOSi’s proposal improperly “misled SOSi into believing that there were no flaws that increased the risk of unsuccessful contract performance which needed to be addressed in SOSi’s FPR.” Protest at 20 (emphasis omitted). The protester asserts that if the agency had “been forthcoming and notified SOSi that its proposal had been assessed concerns/weaknesses, SOSi would have been able to address the concerns in its [FPR] and increased one or both of its Factor adjectival ratings to the same or better than CACI.” *Id.* The protester also argues that by inaccurately stating SOSi’s proposal “was not assessed any weaknesses, the Agency failed to conduct meaningful discussions.” *Id.* at 22.

The agency responds that the protester “erroneously conflates an area of ‘concern’ with a [w]eakness,” and represents that the identified concerns did not rise to the level of weaknesses because “risk takes many forms.” MOL at 8. According to the NSA, SOSi “wants to take away the Agency’s ability to assess the degree of risk associated with any ‘concern’ captured during the evaluation process.” *Id.* Further, the agency maintains that it properly did not discuss with SOSi “‘concerns’ that did not amount to a [w]eakness,” in light of the fact that the FAR only requires agencies to disclose significant weaknesses and deficiencies during discussions. *Id.* at 8-9, *citing* FAR 15.306(d)(3).

Here, we need not resolve whether the concerns identified by the evaluators amounted to weaknesses, as the protester argues, because, even if the allegation is taken at face value, the protester was not prejudiced by the agency’s failure to respond in the affirmative when asked: “Has the Government identified any weaknesses in SOSi’s proposal?” AR, Tab 54, Email Exchanges between SOSi and Agency at 24. That is, even had the NSA answered “yes” when asked if there were weaknesses in the protester’s proposal, there would have been no subsequent requirement for the agency to inform SOSi of the nature of those weaknesses. As our Office has consistently stated, agencies are not required to afford offerors all-encompassing discussions or to discuss every aspect of a proposal that receives less than the maximum score; nor are agencies required to advise an offeror of a weakness that is not considered significant, even where the weakness subsequently becomes a determinative factor in choosing between two closely rated proposals. *Apptis Inc., supra* at 4.

The protester does not argue that the concerns identified by the evaluators--and not disclosed by the agency during discussions--meet the solicitation’s definitions for a *significant* weakness or deficiency. Nor does the record reflect that the concerns rose to such a level that they appreciably increased the risk of unsuccessful performance.³

³ The solicitation defined a “significant weakness” as a “flaw in the proposal that appreciably increases the risk of unsuccessful contract performance.” RFP at 131. While a “deficiency” was defined as a “material failure of a proposal to meet a

(continued...)

Rather, in comparing the proposals of the four offerors for the criteria under the various subfactors of the management factor, the SSA found SOSi's proposal "substantively equal" to the awardee's proposal under two criteria and concluded that SOSi's proposal met, but did not exceed, the government's requirements for four other criteria. AR, Tab 92, SSD at 5-9. The SSA did not reference the concerns identified by the evaluators in SOSi's proposal under the management factor, other than to specifically disagree with one of the concerns. *Id.* at 7.

Competitive prejudice is an essential element of a viable protest; when the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest, even if deficiencies in the agency's evaluation of proposals are found. *YWCA of Greater L.A.*, B-414596.7, B-414596.8, Mar. 11, 2019, 2019 CPD ¶ 104 at 10. Here, we conclude that even had the agency labeled the areas of concern in SOSi's proposal as weaknesses, the NSA was under no obligation to discuss those weaknesses with the firm. Additionally, without identifying the basis for the agency's concerns, we fail to see how SOSi would have been able to change its proposal to address them. Thus, the protester cannot demonstrate it was competitively prejudiced from any error the agency may have committed by responding in the negative, rather than the affirmative, when asked if there were weaknesses identified in SOSi's proposal. Accordingly, we deny the protester's discussions challenges. *See e.g., Education Dev. Ctr., Inc.*, B-418217, B-418217.2, Jan. 27, 2020, 2020 CPD ¶ 61 at 7 (denying challenge of agency's failure to discuss weaknesses that increased the risk of unsuccessful performance where agency was not required to disclose weaknesses that were not significant).

Non-Cost Evaluation

The protester challenges as unreasonable one of the concerns assessed by evaluators with SOSi's proposal under the text and audio translation criterion of the talent management subfactor of the management factor.⁴ Additionally, the protester characterizes the agency's evaluation of proposals as disparate, and asserts four specific instances of disparate treatment.⁵ For the reasons explained below, we find that SOSi's various challenges provide no basis to sustain the protest.

Government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level." *Id.*

⁴ The protester initially challenged several concerns assessed in its proposal under the management and ability to staff factors. *See generally* Protest at 25-31. In its comments on the agency's report responding to the protest, SOSi withdrew its challenges to the assessment of all but one of these concerns, the text and audio translation concern discussed herein. Comments at 24.

⁵ In its initial protest, SOSi asserted four instances of disparate treatment. *See generally* Protest at 31-32. In its comments on the agency's report responding to the
(continued...)

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. *SeaTech Security Solutions; Apogee Group, LLC, supra* at 11. 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.*; *Arctic Slope Mission Servs. LLC*, B-417244, Apr. 8, 2019, 2019 CPD ¶ 140 at 8. A protester's disagreement with the agency's evaluation judgments, without more, does not render those judgments unreasonable. *Id.*; *Serco Inc.*, B-407797.3, B-407797.4, Nov. 8, 2013, 2013 CPD ¶ 264 at 8.

Further, it is a fundamental principle of government procurement that contracting agencies must even-handedly evaluate proposals against common requirements and evaluation criteria. *Battelle Memorial Inst.*, B-418047.5, B-418047.6, Nov. 18, 2020, 2020 CPD ¶ 369 at 6. Agencies properly may assign dissimilar proposals different evaluation ratings, however. *Id.*; *Office Design Group v. United States*, 951 F.3d at 1372 (Fed. Cir. 2020), *citing* FAR 1.102-2(c)(3) ("All contractors and prospective contractors shall be treated fairly and impartially but need not be treated the same."). Thus, when a protester alleges disparate treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the offerors' proposals. *Education Dev. Ctr., supra* at 9. That is to say, in order to prevail on an allegation of disparate treatment, a protester must show that the agency unreasonably evaluated the protester's proposal in a different manner than another proposal that was substantively indistinguishable or nearly identical. *Battelle Memorial Inst., supra* at 6, *citing Office Design Group, supra* at 1372.

Text and Audio Translation Criterion

The protester contends that the agency "unreasonably assigned SOSi a 'concern' for proposing to use [DELETED] testing vendor" under the text and audio translation criterion of the talent management subfactor of the management factor. Protest at 28. The agency maintains that the protester's "argument is one of mere disagreement with the Agency's assessment," which "reasonably found that the Protester's proposed approach met requirements and was properly" appraised as meets standard. COS at 15.

As relevant here, the solicitation requires the successful offeror "to validate, via assessments, the text translation and audio translation skill level(s) of language analyst candidates proposed to work on the . . . contract to ensure they meet labor category requirements levied via the technical task order." AR, Tab 4, RFP Attach. J.1, Statement of Work (SOW) at 8. The solicitation specifies that the "assessment formats shall be text translation and audio translation from the required language into written

protest, SOSi asserted four additional instances of disparate treatment. *See generally* Comments at 18-24. The protester has since withdrawn four of its eight assertions of disparate treatment. Comments at 17; Supp. Comments at 3 n.3.

English,” and that “[t]he languages to be covered by the assessments should include the following: Modern Standard Arabic (text only), Arabic-Levantine (audio only), Arabic-Iraqi (audio only), Arabic-Egyptian (audio only), Chinese (Mandarin), Farsi, French, German, Italian, Korean, Portuguese, Russian, Serbo-Croatian, Spanish, Turkish, and Urdu.” *Id.*

Under the talent management subfactor of the management factor, the solicitation provided that one of the criterion on which offerors would be evaluated was the extent to which “the Offeror’s approach validate[d], via assessments, the text translation and audio translation skill level(s) of language analyst candidates.” RFP at 134. The evaluators noted that SOSi “chose to only partner with one testing vendor,” and that vendor “does not currently have the ability to conduct testing for all languages required under the contract.” AR, Tab 68, SOSi Management Eval Rpt. at 4, 18. The evaluators found that this introduced “a performance risk” because, if the single proposed vendor “does not have the additional tests developed by the end of the transition period, and there are vacancies remaining for those languages, then [SOSi] will be unable to test and staff those positions.” *Id.* Notwithstanding this concern, the evaluators decided SOSi’s proposal merited an appraisal of “meets standard” for the text and audio translation requirement. *Id.* at 3, 17. Specifically, the evaluators explained that “[a]lthough [the proposed vendor] does not currently provide audio assessments for all of the required languages . . . [SOSi] indicates that [the proposed vendor] will have all missing and required audio assessments available by the end of the contract transition period.” *Id.* at 18.

The protester maintains that because “the Solicitation did not require offerors to demonstrate the ability to test all languages at the time of proposal submission,” but instead “such capabilities are only needed during contract transition,” there was “no reasoned basis” for the assessment of the noted concern. Protest at 28. Further, the protester notes that its proposal explained “SOSi has coordinated with [the proposed vendor] to [DELETED], and remains prepared to ensure this testing is ready by the end of the transition period [DELETED].” *Id.* at 29. Rather than an appraisal of “meets standard,” the protester asserts that a reasonable evaluation would have resulted in an appraisal of “strength” for this criterion. *Id.*

The agency explains that, contrary to the protester’s contention, the NSA’s concern was not “that the vendor did not provide testing for all languages *at the time of the proposal submission*,” but rather “whether [SOSi’s] proposal would provide the necessary capabilities by the end of the contract transition period, which the agency agrees is the point in time at which the solicitation required provision of full testing capability. MOL at 28; COS at 15. The agency maintains that the assessment of the concern about whether SOSi would be ready in time to conduct testing for all languages required under the contract was reasonable in light of the proposed vendor’s need to develop testing capability for approximately [DELETED] percent of the SOW requirements. COS at 15. Further, the agency notes that the evaluators specifically acknowledged that SOSi should be able to meet all requirements by the end of the transition period, but did not

consider this sufficient to eliminate the concern or to raise the appraisal for this criterion from “meets standard” to “strength.” *Id.*

Based on the record here, we find that SOSi has presented nothing more than its disagreement with the evaluators’ assessment of the discussed concern, which, without more is insufficient to render the evaluators’ judgment unreasonable. Accordingly, we deny the protester’s evaluation challenge. See e.g., *SeaTech Security Solutions; Apogee Group, LLC, supra* at 14 (denying challenge to assessment of a concern in protester’s proposal where evaluators noted and contemporaneously explained why the concern was not alleviated).

The protester also asserts the agency evaluated in a disparate manner under the text and audio translation criterion. Specifically, SOSi contends that if its proposal merited assessment of a concern and a criterion appraisal of “meets standard” for proposing [DELETED] testing vendor, then the awardee’s proposal merited the same concern and appraisal as CACI also proposed to use [DELETED] testing vendor, yet received a criterion appraisal of “strength” for text and audio translation. Protest at 32; Comments at 18, 26, *citing* AR, Tab 89, CACI Management Eval. Rpt. at 15. The protester’s argument ignores, however, that the evaluators were concerned that SOSi’s proposal to partner with only a single testing vendor might result in there being gaps in the vendor’s testing capabilities at the end of contract transition period, whereas the awardee proposed to partner with two testing vendors. *Compare* AR, Tab 68, SOSi Management Eval. Rpt. at 4, 18 *with* Tab 89, CACI Management Eval. Rpt. at 15. Hence, the record is clear that the different evaluations were a direct result of differences in the proposals, and we also deny this aspect of the protester’s challenge to the text and audio translation evaluation.

Disparate Treatment

In addition to the text and audio translation criterion, the protester contends the agency disparately evaluated proposals under the program management office (3.1.2), staffing approach (3.1.3), and transition plan (3.1.4) criteria of the program management subfactor and the retention methods (3.2.3) criterion of the talent management subfactor of the management factor. See *generally* Comments at 18-24. The agency contends that the protester has failed “to demonstrate that the proposals were substantively indistinguishable or nearly identical in any respect.” Supp. MOL at 2.

As a representative example, we examine the protester’s assertion of disparate treatment under the retention methods criterion. Under this criterion, the solicitation established the agency would evaluate the extent to which “the Offeror’s approach describe[d] its retention methods and processes to ensure full staffing throughout the contract.” RFP at 134. The record shows that the evaluators did not assess any concerns with SOSi’s proposed approach for this criterion, noted one aspect of the proposed approach that “did have merit,” and assigned SOSi’s proposal an appraisal of “meets standard” at the criterion level, a rating of good for the talent management subfactor, and an overall rating of acceptable for the management factor. AR, Tab 68,

SOSi Management Eval. Rpt. at 1, 3-4, 14-15, 18-19. With respect to CACI's proposal, the evaluators also did not assess any concerns for this criterion but did assess four "highlights" they considered "advantageous to the Government," and appraised CACI's proposal a "strength" at the criterion level, a rating of "outstanding" for the talent management subfactor, and an overall rating of "good" for the management factor. AR, Tab 89, CACI Management Eval. Rpt. at 1-2, 16.

The protester maintains that while the evaluators "emphasized that CACI's proposal included [DELETED]," the agency "declined to assign any 'highlights' for SOSi's retention plan proposal even though it touted the same benefits as CACI's proposal." Comments at 23. To support its argument, the protester presents a side-by-side comparison of five selected excerpts from SOSi's and CACI's proposal, which SOSi contends "reveals equivalent approaches to retention." *Id.*, *comparing* AR, Tab 59, SOSi Management Proposal at 48, 122, 124-125 *with* Tab 83, CACI Management Proposal at 112-113, 115, 117.⁶

The protester's contention is not supported by the record, however. Rather, the record reflects that the excerpts of the two proposals relied upon by SOSi are taken out of context from the proposals as a whole. For example, the protester cites to its proposal statement that:

[DELETED]

Comments at 23, *citing* AR, Tab 59, SOSi Management Proposal at 125. The protester attempts to equate this statement with CACI's proposal statement that the firm uses [DELETED]." Comments at 23, *citing* AR, Tab 83, CACI Management Proposal at 111. The protester's selected excerpt ignores, however, that CACI's proposal goes on to reference how its [DELETED]. AR, Tab 83, CACI Management Proposal at 114. Further, CACI's proposal describes a range of engagement practices, including [DELETED]. *Id.* at 115. Contrary to the protester's contention, our review finds that the level of engagement between managers and language analysts related to employee development proposed by CACI is greater than, not equivalent to, the [DELETED] noted in the SOSi proposal excerpt cited by the protester.

As a further example, the protester claims that a chart in its proposal illustrating [DELETED] "Retention Plan Elements" of [DELETED], is equivalent to a statement in CACI's proposal that the firm "[DELETED]." Comments at 23, *comparing* AR, Tab 59, SOSi Management Proposal at 122 *with* AR, Tab 83, CACI Management Proposal at 112. The fact that the two proposals use some of the same terminology or phrases related to retention, however, is not dispositive. Rather, to assess whether the agency reasonably evaluated the proposals differently, we look to the detailed discussion of

⁶ SOSi's comments cite to the internal pagination of the two proposals. For consistency in our citation method, we have adjusted the page numbers of SOSi's citations to reflect the Adobe PDF pagination of the two proposals. Thus, for example, we have changed SOSi's citation to page 35 of its own proposal to page 48.

these terms within the proposals to see if there are substantive differences. Here, the record reflects such differences. For instance, with respect to benefits, SOSi offers its employees “a 401(k) retirement savings plan with [DELETED] [percent] employer matching,” while CACI offers up to an [DELETED] percent match. AR, Tab 59, SOSi Management Proposal at 123; Tab 83, CACI Management Proposal at 119.

Based on our review of the record, we find no basis to object to the agency’s evaluation. While the differences between SOSi’s and CACI’s approaches to retention may not be stark, the proposals were neither identical nor substantively indistinguishable. Accordingly, we deny this allegation of disparate treatment of the evaluation of proposals. See e.g., *Systems Implementers, Inc.; Transcend Technological Systems, LLC*, B-418963.5 et al., June 1, 2022, 2022 CPD ¶ 138 at 19 (denying allegation where offerors proposed to use similar agile processes but proposals were sufficiently different that agency reasonably assessed them as meriting different strengths); *Spatial Front, Inc.*, B-416753, B-416753.2, Dec. 10, 2018, 2018 CPD ¶ 417 at 15-16 (denying allegation where protester and awardee both quoted use of same information technology application, but awardee’s quotation provided more detail about its proposed use of the application).

Similarly, the protester’s two remaining contentions of disparate treatment are not supported by the record, which shows that the evaluators assessed the proposals differently because they were different. Further, the SSA specifically disagreed with one of the concerns highlighted by the protester as evidencing one of the two instances of disparate treatment. *Compare* Comments at 19 with AR, Tab 92, SSD at 7 (Providing that the evaluators “noted concerns with [offeror x] and SOSi’s proposals regarding their proposed approaches to incumbent capture,” but the SSA stated: “I do not agree with this concern” because “[a] robust incumbent capture goal to ensure successful contract performance is a reasonable approach.”) Accordingly, while not discussed in detail, we also deny these disparate treatment allegations.

Best-Value Determination

As a final matter, the protester argues that the agency’s best-value tradeoff decision was improper because it was based on a flawed evaluation. Protest at 33. This allegation is derivative of the protester’s challenges to the agency’s evaluation of proposals and conduct of discussions. As discussed above, we find no basis to object to the agency’s evaluation of proposals or conduct of discussions. Accordingly, we dismiss this allegation because derivative allegations 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).

The protest is denied.

Edda Emmanuelli Perez
General Counsel