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## Decision

**Matter of:** Honeywell Technology Solutions, Inc.

**File:** B-400771; B-400771.2

**Date:** January 27, 2009

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### DIGEST

1. Post-closing time protest that awardee has an impermissible organizational conflict of interest (OCI) is untimely where (1) solicitation was issued on an unrestricted basis, (2) protester was aware of the underlying facts giving rise to the potential OCI (and knew awardee was participating in the procurement), and (3) in response to protester's inquiry, agency specifically informed protester that it did not believe awardee had an impermissible OCI.
2. Protest that awardee gained an unfair competitive advantage through its retention of a former agency official as a consultant will not be reviewed where the protester did not timely report the underlying alleged procurement integrity provision violation to the contracting agency within 14 days after the protester first discovered the possible violation, as required by GAO's Bid Protest Regulations.
3. Contracting agency engaged in meaningful discussions where the agency advised protester of specific weaknesses regarding its technical proposal; agency was not required to also afford the protester an opportunity to cure proposal defects first introduced either in response to discussions or in a post-discussion proposal revision.

4. Protest challenging the evaluation of offerors' technical proposals is denied where the record establishes that the agency's evaluation was reasonable and consistent with the evaluation criteria.

5. Protest challenging the agency's cost realism evaluation of awardee's proposed staffing levels is denied where the record demonstrates that the agency's conclusions were reasonable.

6. Protest challenging the evaluation of offerors' past performance is sustained where the record establishes that the agency's evaluation was not reasonable or consistent with the stated evaluation criteria.

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## **DECISION**

Honeywell Technology Solutions, Inc., of Columbia, Maryland, protests the award of a contract to ITT Corporation – Advanced Engineering & Sciences (ITT), of Herndon, Virginia, under request for proposals (RFP) No. NNG08218142R, issued by the National Aeronautics and Space Administration (NASA), Goddard Space Flight Center (GSFC), for space communications network services (SCNS). Honeywell argues that the agency's evaluation of offerors' proposals and subsequent source selection decision were improper. Honeywell also contends that the agency's discussions with the protester regarding its proposal were inadequate and misleading, that ITT had an impermissible organizational conflict of interest, and that by retaining a former NASA official as a consultant in violation of statutory procurement integrity provisions, ITT gained an unfair competitive advantage.

We sustain the protest regarding the agency's evaluation of ITT's past performance, and deny the remainder of the protester's allegations.

## **BACKGROUND**

NASA is the federal agency responsible for the nation's public space program; it is also responsible for long-term civilian and military aerospace research. In furtherance thereof, the goal of the SCNS program is to support NASA's space and ground networks, which provide most of the communications for a wide range of NASA's science-based, earth-orbiting spacecraft, including the International Space Station, the Space Shuttle, the Hubble Space Telescope, and the Earth Observing System satellites, as well as space communications support for other government agencies and commercial customers. Contracting Officer's Statement, Nov. 24, 2008, at 5.

The SCNS program requirements are essentially twofold in nature: those relating to NASA's Space Network (SN), and those relating to the agency's Ground Network (GN). The SN is principally comprised of a fleet of on-orbit tracking and data relay satellites (TDRS) and an associated ground system consisting of space-to-ground link terminals that together provide space communication services to NASA and its

customers. The SN services, involving an extremely large capital investment, government-owned/contractor-operated facilities, and continuous (24 hours a day/7 days a week) operational support of the TDRS and associated ground systems, were, together with overall program management, considered the “core requirements” of the SCNS program. The separate NASA GN consists of an orbital tracking network, a satellite laser ranging network, the very long baseline interferometry network, and associated facilities. The GN operational, maintenance, and sustainment services, involving a diverse mix of commercial and government assets, evolving geographic and technical customer requirements, and legacy systems, were to be performed on an “as needed” (task order) basis. *Id.* at 5-6; Statement of Work (SOW) at 00806.

The RFP, issued on January 16, 2008, contemplated the award of a contract with a cost-plus-award-fee element (for the core requirements) and a fixed-price, indefinite-delivery/indefinite-quantity (ID/IQ) element (for the task order requirements), for a period of 5 years together with two 1-year options. In general terms the solicitation required the successful offeror to provide the personnel, materials, and facilities necessary to perform all SCNS requirements as set forth in the SOW. RFP § C at 00611. The RFP established three evaluation factors in descending order of importance: mission suitability; cost; and past performance. The mission suitability factor was in turn comprised of four subfactors, their relative importance reflected in a point system: technical approach and understanding the requirement (technical approach) (400 points); management approach and compensation, and staffing (management approach) (450 points); safety and health (50 points); and small business utilization (100 points). The solicitation also established that the noncost factors, when combined, were significantly more important than cost. Award was to be made to the responsible offeror whose proposal was determined to represent the “best value” to the government, all factors considered. *Id.*, § M at 00785-97.

Three offerors, including incumbent Honeywell and ITT, submitted proposals by the February 15 closing date. Offerors’ submissions consisted of technical proposals, cost proposals, and responses to four representative task orders (RTO) (essentially sample task orders).<sup>1</sup> An agency selection evaluation board (SEB) evaluated offerors’ proposals as to the noncost factors and subfactors using an adjectival rating system that was set forth in the RFP: excellent; very good; good; fair; poor; and with regard to the past performance factor, neutral.<sup>2</sup> The SEB also evaluated offerors’ cost and price submissions. AR, Tab 40, Initial SEB Report.

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<sup>1</sup> Offerors were to submit a separate task implementation plan (TIP) and cost proposal for RTOs #1-3, and a study paper for RTO #4. *Id.*, § L at 00744-45. The RFP established that RTO responses would be part of the evaluation of proposals under the technical approach subfactor. *Id.*, § M at 00788-89.

<sup>2</sup> The SEB evaluated offerors’ proposals as to the mission suitability factor and subfactors using a point and percentile scoring system. In accordance with NASA

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The contracting officer decided that discussions with offerors were necessary, and established a competitive range consisting of the Honeywell and ITT proposals. The agency conducted discussions, followed by the offerors' submission of final proposal revisions (FPR) by August 25. NASA's final evaluation ratings of the Honeywell and ITT proposals were as follows:

<b>Factor</b>	<b>Honeywell</b>	<b>ITT</b>
Mission Suitability		
Technical Approach	Excellent	Excellent
Management Approach	Good	Good
Safety and Health	Good	Good
Small Business Utilization	Excellent	Excellent
Overall	Very Good	Very Good
Past Performance	Very Good	Excellent
Total Evaluated Cost	#[DELETED]	#[DELETED]

Id., Tab 80, Final SEB Report, at 23640, 23752.

The SEB subsequently briefed the source selection authority (SSA) regarding the various strengths and weaknesses in the offerors' proposals. Id., Tab 81, SEB Presentation to SSA. On October 6, after having received the final evaluation report and SEB presentation, the SSA determined that ITT's proposal was technically superior to that of Honeywell under both the mission suitability and past performance factors. Specifically, the SSA found that ITT had technical advantages over Honeywell in the areas of increasing efficiency of personnel, obsolescence avoidance, a detailed demonstration of systems engineering understanding, and a plan to provide reviews and assessments of SCNS tasks. The SSA also found that while both offerors possessed highly relevant past performance, ITT had a quality advantage relating to systems engineering and developmental tasks. The SSA then determined that ITT's higher technically-rated, higher-cost proposal represented the best value to the government. Id., Tab 82, Source Selection Decision. This protest followed.

## DISCUSSION

Honeywell's protest raises numerous challenges to NASA's evaluation of offerors' proposals. First, the protester alleges that ITT had an impermissible organizational

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Federal Acquisition Regulation (FAR) Supplement § 1815.305(a)(3)(A) and the solicitation evaluation criteria, percentile scores were then converted into adjectival ratings based on pre-established percentile ranges. RFP § M at 00797; Contracting Officer's Statement, Nov. 24, 2008, at 15-16.

conflict of interest that the agency failed to recognize and take into account in its evaluation of proposals. Second, the protester contends that by the retention of a former NASA official as a consultant to the SCNS procurement allegedly in violation of the statutory procurement integrity provisions, ITT gained an unfair competitive advantage. Third, Honeywell argues that the agency's discussions with the firm regarding its technical proposal were inadequate and misleading. Fourth, Honeywell contends that the agency's evaluation of offerors' technical proposals was improper. Fifth, the protester alleges that the agency's evaluation of offerors' past performance was unreasonable. Lastly, Honeywell maintains that the agency's cost realism evaluation of ITT's proposal was unreasonable. As detailed below, we find that NASA's evaluation of ITT's past performance was improper. Although we do not specifically address all of Honeywell's remaining issues and arguments, we have fully considered all of them and find they provide no basis on which to sustain the protest.

### Organizational Conflict of Interest

Honeywell protests that ITT had an impermissible organizational conflict of interest (OCI) based on unequal access to information.<sup>3</sup> The protester maintains that two senior ITT employees, R.C. and R.B.,<sup>4</sup> gained access to material, nonpublic information pertaining to both Honeywell and NASA during the course of performance of ITT's mission service program (MSP) system engineering support contract with GSFC (ITT's MSP contract included oversight of the predecessor contract with Honeywell). Honeywell alleges that, notwithstanding the existence of proprietary information exchange agreements (PIEA) between itself and ITT employees restricting the use and disclosure of Honeywell proprietary information, these individuals participated on behalf of ITT in the SCNS procurement. Because the unequal access to information OCIs were not avoided or mitigated, the protester argues, NASA could not properly award the SCNS contract to ITT. Protest, Oct. 20, 2008, at 36-47.

The agency issued the RFP on January 16, with a February 15 closing date for receipt of proposals. From November 2007 until February 15, 2008, Honeywell and ITT

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<sup>3</sup> An "unequal access to information" OCI occurs where a firm has access to nonpublic information as part of its performance of a government contract and where that information may provide the firm an unfair competitive advantage in a later competition for a government contract. See FAR § 2.101; Aetna Gov't Health Plans, Inc.; Foundation Health Fed. Servs., Inc., B-254397.15 et al., July 27, 1995, 95-2 CPD ¶ 129 at 12. Contracting officials are required to identify and evaluate OCIs as early in the acquisition process as possible. FAR § 9.504(a); Alion Sci. & Tech. Corp., B-297022.3, Jan. 9, 2006, 2006 CPD ¶ 2 at 5.

<sup>4</sup> Throughout this decision, we identify individuals by their initials rather than their full names.

engaged in a back-and-forth exchange regarding the PIEAs, the specific ITT employees, and whether any Honeywell proprietary information had been used by ITT in connection with the SCNS procurement. ITT Dismissal Request, Nov. 12, 2008, at 4-8. Additionally, on February 13, NASA responded to a prospective offeror's question regarding what had been done to ensure that ITT's access to Honeywell's methods of performing the predecessor contract did not create an unmitigated OCI. The agency explained in detail its determination that an OCI did not exist such that ITT should be precluded from competing on the SCNS procurement.<sup>5</sup> Id., attach. 7, Final RFP Questions and Responses. Honeywell then participated in the SCNS procurement, and filed its protest of the OCI issue after ITT was selected for award.

Under our Bid Protest Regulations, protests based upon alleged improprieties in a solicitation which are apparent prior to the time set for receipt of initial proposals must be filed prior to that time; similarly, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated into the solicitation must be protested not later than the next closing time for receipt of proposals following the incorporation. 4 C.F.R. § 21.2(a)(1) (2008).

As a general rule, a protester is not required to protest that another firm has an impermissible OCI until after that firm has been selected for award. REEP, Inc., B-290688, Sept. 20, 2002, 2002 CPD ¶ 158 at 1-2. A different rule applies, however, where a solicitation is issued on an unrestricted basis, the protester is aware of the facts giving rise to the potential OCI, and the protester has been advised by the agency that it considers the potential offeror eligible for award. Abt Assocs., Inc., B-294130, Aug. 11, 2004, 2004 CPD ¶ 174 at 2; International Sci. & Tech. Inst., Inc., B-259648, Jan. 12, 1995, 95-1 CPD ¶ 16 at 3-4. In such cases, the protester cannot wait until an award has been made to file its protest of an impermissible OCI, but instead must protest before the closing time for receipt of proposals. Abt Assocs., Inc., supra.

Here, Honeywell's concerns that specific ITT employees were not abiding by the PIEAs and were improperly using its proprietary information on behalf of ITT in the SCNS procurement arose prior to the RFP closing date. Further, it is clear that Honeywell also knew that ITT was participating in the procurement and that the agency did not consider ITT to have an OCI that precluded it from receiving the award. Under these circumstances, Honeywell's protest is untimely because it was not filed prior to the closing date for receipt of proposals. Abt Assocs., Inc., supra.

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<sup>5</sup> For example, the agency informed offerors that only government employees, and not ITT personnel, had been given access to any Honeywell proprietary information. NASA also stated that ITT personnel were not involved in the development of the SCNS RFP and SOW, nor given access to sensitive information relating to the SCNS procurement. Id., attach. 7, Final RFP Questions and Responses.

Honeywell does not deny that it was aware of ITT's involvement in the SCNS procurement or NASA's determination regarding ITT eligibility for contract award prior to the initial closing date. Rather, the protester argues that it was not until February 15, after the submission of its initial proposal, that it became aware of all the relevant facts regarding ITT's OCI. As a result, Honeywell argues, its protest filed within 10 days of the post-award debriefing is timely. See 4 C.F.R. § 21.2(a)(2); Honeywell Dismissal Request Response, Nov. 17, 2008, at 7-12. We disagree.

The record shows that Honeywell was on notice, prior to the initial closing date, of the facts necessary to argue that ITT had an impermissible OCI. Moreover, even assuming that it was the additional February 15 correspondence from ITT that provided Honeywell with its basis for protest as the protester claims, Honeywell was then required to file its protest on this ground prior to the next closing time for receipt of proposals--being already aware both of ITT's participation and NASA's view that ITT could participate--which it did not do. See 4 C.F.R. § 21.2(a)(1).

#### Alleged Procurement Integrity Provision Violation and Unfair Competitive Advantage

Honeywell protests that ITT gained an unfair competitive advantage through the retention of a former NASA official as a consultant on the SCNS procurement, in violation of the statutory procurement integrity provisions. The protester alleges that ITT retained R.S., a former NASA deputy associate administrator whose supervisory position involved overseeing the developmental and operational elements of the SCNS SOW. Honeywell argues that because R.S.'s work for ITT violated applicable procurement integrity standards,<sup>6</sup> the awardee gained an unfair competitive advantage in the preparation of its proposal. Honeywell contends that the procurement integrity and conflict of interest issues involving R.S. so tainted the SCNS procurement that ITT should be disqualified from the competition. Protest, Oct. 20, 2008, at 47-51.

Both our Bid Protest Regulations and the statutory procurement integrity provisions require--as a condition precedent to our considering the matter--that a protester have reported the alleged violation to the contracting agency within 14 days after first becoming aware of the information or facts giving rise to the alleged violation. 41 U.S.C. § 423(g); 4 C.F.R. § 21.5(d). The 14-day reporting requirement affords the agency responsible for the procurement an opportunity to investigate alleged improper action during the conduct of an acquisition and, in appropriate

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<sup>6</sup> The procurement integrity provisions prohibit any present or former official of the United States, or a person who is acting or has acted for or on behalf of, or who is advising or has advised the United States with respect to a federal agency procurement, from knowingly disclosing contractor bid or proposal information or source selection information before the award of a federal agency procurement contract to which the information relates. 41 U.S.C. § 423(a).

circumstances, to take remedial action before completing the tainted procurement. See 41 U.S.C. § 423(e)(3); SRS Techs., B-277366, July 30, 1997, 97-2 CPD ¶ 42 at 2. Here, the agency and the intervenor argue that Honeywell's protest is untimely because Honeywell failed to raise R.S.'s perceived procurement integrity violation within 14 days of discovering the information on which the allegation is based. We agree.

It is clear from the record that Honeywell knew as of December 17, 2007, both that R.S. was assisting ITT in the SCNS procurement and of R.S.'s previous role at NASA. Specifically, at a NASA holiday party on December 17, 2007, R.S. informed Honeywell vice president W.F. that he was assisting ITT with its proposal for the SCNS procurement. The two individuals had known each other for many years, and W.F. was very familiar with R.S.'s prior role at NASA. ITT Dismissal Request, Nov. 12, 2008, attach. 8, Declaration of R.S., Nov. 12, 2008. Because the firm failed to report the perceived procurement integrity violation regarding R.S. to the contracting agency within 14 days of this date, we conclude that Honeywell's protest is untimely.

Honeywell does not dispute that the December 17, 2007 conversation took place between its vice president and R.S. Rather, Honeywell argues that, even though it did not report the procurement integrity allegations concerning R.S. to the contracting agency within 14 days, its protest nevertheless is timely to the extent Honeywell argues that ITT gained an unfair competitive advantage by retaining R.S. The protester contends that GAO's standard of review focuses on whether an unfair competitive advantage has been created, and not whether a procurement integrity violation has been established. Honeywell Response to Dismissal Request, Nov. 17, 2008, at 2-3, citing PRC, Inc., B-274698.2, B-274698.3, Jan. 23, 1997, 97-1 CPD ¶ 115.

Our decision in PRC does not support the protester's position here. In PRC, we stated that the issue of whether an individual violated procurement integrity standards is not by itself determinative of whether the individual's employer obtained an unfair competitive advantage. Rather, it is also necessary to determine whether any action of the former government employee may have actually resulted in prejudice for, or on behalf of, the awardee during the award selection process. In doing so, we typically consider whether the former government employee had access to competitively useful inside information, as well as whether the former government employee's activities with the firm were likely to have resulted in a disclosure of such information. These are the same questions to be considered in reviewing an allegation that an individual violated procurement integrity provisions. Guardian Techs. Int'l, B-270213 et al., Feb. 20, 1996, 96-1 CPD ¶ 104 at 6. Our decision in PRC thus recognizes the critical nexus between these two allegations -- that a procurement integrity violation occurred, and that the violation resulted in prejudice during the procurement at issue. This nexus is evident in this case, where Honeywell's assertion that ITT gained an unfair competitive advantage is premised on the alleged underlying procurement integrity violations.



In sum, because Honeywell knew R.S. was assisting ITT with the SCNS procurement as of December 17, 2007, and failed to report the perceived procurement integrity violation to NASA within 14 days thereof, we will not review the matter now, consistent with the requirements of the statutory procurement integrity provisions, 41 U.S.C. § 423(g), as reflected in our Bid Protest Regulations, 4 C.F.R. § 21.5(d).

#### Lack of Meaningful Discussions

Honeywell protests that the agency failed to conduct meaningful discussions by failing to raise the one technical weakness it found in Honeywell's FPR.

As set forth above, the RFP contained four RTOs that offerors were to address in their technical proposals, either by the submission of a TIP and cost proposal (RTOs #1-3) or a study paper (RTO #4). RTO #1 concerned a new space-to-ground link terminal (SGLT) at the White Sands Complex, New Mexico. The RFP informed offerors that as part of an effort to ensure adequate SN grounds systems resources were available, a project to develop a new SGLT was being initiated. The stated task requirement was for the contractor to complete the first phase of the new SGLT project, including planning, definition of the architecture, operations concepts, requirements, external interfaces, and preliminary design. RFP, RTO #1, at 01245. The solicitation also informed offerors that a TIP submission was to include, at a minimum, the technical approach for the specific requirements of the task, identification of potential technical challenges, identification and mitigation of risks, and a detailed description of any assumptions made in the response. SOW at 00845.

Honeywell submitted its TIP for RTO #1 as part of its initial proposal. AR, Tab 13, Honeywell Initial Proposal (Mission Suitability), at 2021-47. The SEB rated Honeywell's initial proposal, including RTO responses, excellent under the technical approach subfactor, and identified a total of seven strengths and two weaknesses supporting its determination. *Id.*, Tab 40, Initial SEB Report, at 09941-47. Both of the technical approach weaknesses identified in Honeywell's initial proposal concerned its RTO #1 TIP. The SEB first found that Honeywell's RTO #1 response did not identify certain specific noteworthy risks associated with the completion of the RTO #1 requirement. Second, the agency evaluators found that Honeywell's RTO #1 TIP contained various questionable assumptions. *Id.* at 09946-47. It is the second of the identified weaknesses that is the subject of Honeywell's protest here.

NASA then conducted discussions with Honeywell and informed the offeror of both identified technical approach weaknesses. With regard to the second weakness, the agency stated, "Honeywell's RTO #1 response contains the following questionable assumptions, which require clarification and/or substantiation, or should be corrected and their impact on the RTO be addressed," and then identified the specific assumptions the agency evaluators had questioned. *Id.*, Tab 43, NASA Discussions with Honeywell, at 10143.

Honeywell addressed the agency's discussion topics as part of its FPR. The offeror's FPR included a "highlighted" version that specifically indicated those portions of its revised proposal that had been changed (either added or deleted). The SEB considered Honeywell's discussion responses as part of the evaluation of the offeror's revised proposal, and determined that Honeywell had remedied both originally-identified weaknesses. Specifically, with respect to the second weakness--that Honeywell's RTO #1 TIP contained various questionable assumptions--the SEB found the offeror's revised proposal had adequately addressed each assumption. Id., Tab 80, Final SEB Report, at 23649-50.

The SEB determined, however, that Honeywell's FPR contained a new weakness, namely that the offeror's response demonstrated an inadequate understanding of the requirements analysis, trade study execution and analysis, and requirements identification aspects of the systems engineering process. Id. at 23647-48. Each of the findings on which the SEB based its determination of the new weakness in Honeywell's FPR resulted from the new (*i.e.*, highlighted) sections in the offeror's revised proposal. Id., Tab 46, Honeywell's FPR, at 10663-80. For example, Honeywell's assertion that the candidate architecture could be interfaced with the legacy antenna interconnect mechanisms was a new section in the offeror's revised proposal, as was Honeywell's assertion that a to-be-completed upgrade to the White Sands Complex local area network would have sufficient margin to support the requirements for the new SGLT. Id. at 10674-75, 10680.

Although discussions must address deficiencies and significant weaknesses identified in proposals, the precise content of discussions is largely a matter of the contracting officer's judgment. See FAR § 15.306(d)(3); American States Utils. Servs., Inc., B-291307.3, June 30, 2004, 2004 CPD ¶ 150 at 6. 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. Hanford Env'tl. Health Found., B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 8. Where proposal defects are first introduced either in a response to discussions or in a post-discussion proposal revision, an agency has no duty to reopen discussions or conduct additional rounds of discussions. L-3 Commc'ns Corp., BT Fuze Prods. Div., B-299227, B-299227.2, Mar. 14, 2007, 2007 CPD ¶ 83 at 19; Cube-All Star Servs. Joint Venture, B-291903, Apr. 30, 2003, 2003 CPD ¶ 145 at 10-11.

We conclude that NASA's discussions with Honeywell were meaningful. As set forth above, the discussions expressly informed Honeywell of the specific weaknesses that the SEB had identified in the offeror's initial proposal. Further, the record clearly reflects that the specific significant weakness which Honeywell claims that NASA failed to mention in discussions was first introduced in Honeywell's post-discussions FPR and was not part of its initial proposal. As a result, NASA had no obligation to conduct additional rounds of discussions in order to permit the offeror to address this matter. See L-3 Commc'ns Corp., BT Fuze Prods. Div., *supra*.

Honeywell argues that the agency's discussions were misleading in that NASA affirmatively asked the protester to provide further detail substantiating its conceptual design and then held the submission of additional substantiation against it in the evaluation of its FPR. Protest, Nov. 4, 2008, at 29-30; Protest, Dec. 4, 2008, at 4, 9-12. We disagree. As set forth above, the agency's discussion with Honeywell stated, "RTO #1 response contains the following [six] questionable assumptions, which require clarification and/or substantiation, or should be corrected and their impact on the RTO be addressed." AR, Tab 43, NASA Discussions with Honeywell, at 10143 (emphasis added). The agency did not demand additional substantiation as the protester claims, but left the method of remedying the identified questionable assumptions to the offeror. Moreover, the record indicates it was not that Honeywell provided additional substantiation per se, but the kind of substantiation provided (i.e., premature architecture design decisions without recognition of the role to be played by trade studies and analysis), on which the SEB based its finding of a new weakness.

Honeywell also argues that NASA's discussions were inadequate because the agency failed to disclose its primary concern that Honeywell's RTO #1 TIP described its notional design in "too much" detail. Protest, Dec. 4, 2008, at 4-9. We disagree. It is clear from the record that the SEB's primary concern was that Honeywell's revised RTO #1 TIP described design approaches without adequate planning for trade studies, analysis, requirements traceability and/or requirements identification. It is also clear that, to the extent Honeywell was prematurely proposing a notional design at an early development stage without adequate planning, this was not part of the offeror's initial proposal. The protester fails to explain how the agency's discussions were inadequate by failing to disclose a weakness that did not then exist in Honeywell's proposal.

Honeywell also alleges that its revised proposal made no substantive changes to the level of detail regarding its concept design for the new SGLT. Honeywell points to various functional block diagrams of its subsystem architectures that were in both its initial proposal and FPR. The protester argues that because no changes were made to the level of detail provided in the offeror's FPR, the agency's "new weakness" must have existed originally (and thus the discussions were not meaningful). Protest, Dec. 4, 2008, at 4-9. Again, we disagree. The record clearly reflects that it was not the functional diagrams in Honeywell's proposal that were the basis for NASA's determination of a new weakness. Rather, it was various narrative sections that Honeywell added to its FPR which the agency found indicated inadequate systems engineering understanding.

### Evaluation of Technical Proposals

Honeywell also protests the agency's evaluation of offerors' proposals under the mission suitability factor. Although we do not address all of Honeywell's challenges

to the agency's evaluation of technical proposals, we have considered them all and find they do not provide a basis on which to sustain the protest.

Honeywell first maintains that the agency's evaluation of its RTO #1 TIP was flawed. In this regard, the SEB rated Honeywell's initial proposal as "excellent" under the technical approach subfactor, and considered as a strength that Honeywell's RTO #1 TIP demonstrated a sound understanding of the systems engineering processes required to build the RTO #1 SGLT. AR, Tab 40, Initial SEB Report, at 09944. The SEB also rated Honeywell's FPR as "excellent" under the technical approach subfactor. As detailed above, however, the agency evaluators found as a weakness that Honeywell's revised RTO #1 TIP demonstrated an inadequate understanding of systems engineering processes. The SEB also documented the specific technical findings (e.g., single antenna, LDRS and HDRS input and output ports, disconnect backup inputs, and WSC LAN capacity) on which it based its conclusion. *Id.*, Tab 80, Final SEB Report, at 23647-48.

In reviewing an agency's evaluation, we will not reevaluate technical proposals; instead, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and procurement statutes and regulations. *Urban-Meridian Joint Venture*, B-287168, B-287168.2, May 7, 2001, 2001 CPD ¶ 91 at 2. An offeror's mere disagreement with the agency's evaluation is not sufficient to render the evaluation unreasonable. *Ben-Mar Enters., Inc.*, B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7. Our review of the record shows the agency's evaluation here to be unobjectionable.

In its initial protest Honeywell argued that NASA was factually mistaken about the specific technical criticisms on which it based its determination of inadequate systems engineering understanding.<sup>7</sup> Protest, Oct. 20, 2008, at 25-28. The agency report to our Office addressed the SEB's technical findings regarding Honeywell's RTO #1 TIP, AR, Nov. 24, 2008, at 18-22, and Honeywell's comments did not refute NASA's technical findings. Instead, the protester now argues the agency is simply "making a mountain out of a molehill" and contends that the details identified by the agency do not need be resolved in the TIP but during the risk management phase of the project life-cycle. Protest, Dec. 4, 2008, at 16. The protester essentially acknowledges the factual accuracy of NASA's particular criticisms of Honeywell's RTO #1 TIP but now tries to minimize their importance.

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<sup>7</sup> Honeywell also protests that it was improper for NASA to evaluate the offeror's RTO #1 TIP for the application of systems engineering processes because this was not stated as an evaluation criterion. Protest, Dec. 4, 2008, at 15-16. We find this basis of protest to be untimely. Honeywell knew from the October 15 debriefing that the agency had evaluated RTO #1 TIP for the application of systems engineering processes, and failed to raise this protest ground within 10 days. See 4 C.F.R. § 21.2(a)(2).

Based on the record here, we conclude that NASA had a reasonable basis on which to conclude that Honeywell's revised proposal demonstrated an inadequate understanding of systems engineering processes. It is clear that the SEB's conclusion that Honeywell lacked an adequate understanding of systems engineering process was reasonably based not only on technical flaws in Honeywell's TIP, but also on the offeror's decision to propose design solutions without adequate appreciation of the trade studies, analysis, requirements analysis, and requirements identification functions.

Honeywell also argues the agency's evaluation of its RTO #1 TIP was unreasonable because it was inconsistent with the SEB's initial findings. Protest, Dec. 4, 2008, at 12-14. The fact that a final evaluation differs from an initial evaluation does not establish that it is unreasonable, particularly where, as here, the final evaluation is based on a revised proposal. In making its argument here, Honeywell ignores the fact that its FPR, including its RTO #1 TIP, was not the same as its initial one. Quite simply, the record shows that the agency had a valid basis for reaching a different conclusion regarding Honeywell's understanding of systems engineering processes based on the evaluation of a different, final proposal.

Honeywell also argues that NASA's evaluation of offerors' technical proposals involved disparate treatment. Specifically, Honeywell points to the fact that ITT's proposal was found to have strengths in the areas of obsolescence avoidance, process improvements, staffing and recruitment, and teaming with small disadvantaged businesses. The protester argues that its proposal was equal to ITT's in these specific areas but did not receive similar strengths. We have reviewed the protester's assertions of disparate treatment and find they do not provide a basis on which to sustain the protest.

For example, the RFP established that the technical approach subfactor would include evaluation of the "merit of any new or innovative methods, techniques or technologies, and/or process improvements which are proposed" by the offerors. RFP § M at 00787. The SEB found that ITT's proposal merited a strength as to process improvements. AR, Tab 80, Final SEB Report, at 23657 (internal citations omitted). With regard to Honeywell, the agency determined that its proposed process improvements met the RFP requirements but did not merit a strength. AR, Tab 80, Final SEB Report, at 23643-47.

It is a fundamental principle of federal procurement law that a contracting agency must treat all offerors equally and evaluate their proposals evenhandedly against the solicitation's requirements and evaluation criteria. Rockwell Elec. Commerce Corp., B-286201 *et al.*, Dec. 14, 2000, 2001 CPD ¶ 65 at 5; CRAssociates, Inc., B-282075.2, B-282075.3, Mar. 15, 2000, 2000 CPD ¶ 63 at 5.

Our review of the record confirms that the agency evaluated offerors' proposals equally with regard to proposed process improvements, and that the difference in

evaluation ratings here was not the result of unequal treatment by the agency but instead stemmed from the agency's recognition of differences in the offerors' proposals. NASA reasonably determined that ITT's proposal included several specific process improvements which were found to have merit (i.e., effective means of increasing the likelihood of successful contract performance). By contrast, the agency reasonably found Honeywell's proposed process improvements were generic ones, lacking in specificity or detail. In light of the differences between the offerors' proposals, we find no merit to the protester's assertion of disparate treatment here.<sup>8</sup>

Honeywell also argues that NASA's evaluation of proposals in the area of staffing and recruitment was disparate. The protester maintains that one of the strengths that ITT received was based on its perceived ability to recruit Honeywell's incumbent personnel.<sup>9</sup> Honeywell argues that by currently employing [DELETED] percent of the staff required for the SCNS contract, it had already solved the recruitment problem and should have received an equivalent strength. Protest, Dec. 4, 2008, at 45-48.

We need not resolve this issue because we find that Honeywell has not demonstrated it was prejudiced by any alleged disparate treatment.<sup>10</sup> Competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest. Joint Mgmt. & Tech. Servs., B-294229, B-294229.2, Sept. 22, 2004, 2004 CPD ¶ 208 at 7; see Statistica, Inc. v. Christopher, 102 F.3d 1577 (Fed. Cir. 1996). Here, Honeywell and ITT both received ratings of "good" under the management approach subfactor. Although ITT's recruiting plan was considered a strength by the SEB, the SSA did not find this aspect of ITT's proposal to be a discriminator between the offerors as to management approach subfactor, or rely on it in his best value tradeoff determination. AR, Tab 82, Source Selection Decision, at 23855. Given that there is no evidence in the record that this aspect of ITT's proposal affected the agency's

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<sup>8</sup> We find the agency's evaluation of offerors' proposals as to obsolescence avoidance plans also did not involve unequal or disparate treatment.

<sup>9</sup> The SEB stated that, "ITT proposes the use of a corporately-funded pool for key incumbent recruitment bonuses. This is an effective incentive tool that increases ITT's ability to capture mission-critical incumbent personnel and thereby enhances ITT's potential for successful contract performance." AR, Tab 80, Final SEB Report, at 23664.

<sup>10</sup> Honeywell's assertions that the evaluation of offerors' SDB teaming agreements was disparate, and that the evaluation of ITT's proposal with regard to "partnership meetings" was flawed, Protest, Dec. 4, 2008, at 61-63, similarly fail for lack of any apparent prejudice.

source selection determination, we see no basis to conclude that Honeywell was prejudiced in any way by the alleged disparate treatment.

Honeywell also protests that NASA's evaluation of technical proposals was improper by failing to recognize its various advantages as the incumbent (e.g., staff, physical facilities, in-place systems and processes), as well as the risks associated with transition to ITT. Protest, Oct. 20, 2008, at 10-17; Protest, Dec. 4, 2008, at 42-52. We have reviewed each of the protester's assertions in this regard and conclude that the agency's evaluation was reasonable and consistent with the stated evaluation criteria. For example, NASA recognized as strengths various features associated with Honeywell's incumbent status; the agency also determined that ITT's phase-in plan was detailed and proactive, recognized risks, and proposed risk mitigation strategies. AR, Tab 80, Final SEB Report, at 23644, 23658. To the extent Honeywell argues that NASA did not give enough consideration to the advantages of incumbency or the risks of transition, this amounts to mere disagreement with the agency's evaluation of proposals, which does not make the evaluation unreasonable.

#### Cost Realism Evaluation of ITT's Proposal

Honeywell protests that NASA failed to perform a reasonable cost realism evaluation of ITT's proposal. Specifically, the protester argues that the agency failed to reasonably evaluate the cost realism of ITT's staffing levels for the SCNS core requirements, which were dramatically lower than the amounts proposed by incumbent Honeywell. The protester argues that a proper cost realism evaluation would have resulted in upward adjustments to ITT's proposed costs, thereby increasing the evaluated cost difference between the two offerors' proposals.<sup>11</sup>

The RFP established that the agency would evaluate offerors' cost proposals for the core requirements (and RTO submissions) for cost realism.<sup>12</sup> RFP § M at 00800.

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<sup>11</sup> Honeywell originally protested NASA's cost realism evaluation of ITT's proposal was also unreasonable insofar as the awardee had understated the costs associated with putting into place the necessary infrastructure that incumbent Honeywell already possessed. Protest, Oct. 20, 2008, at 35-36. NASA specifically addressed this protest issue in its report to our Office, AR, Nov. 24, 2008, at 40-41, and Honeywell's comments offered no rebuttal of the agency's position. Comments, Dec. 4, 2008, at 17-32. Where, as here, an agency provides a detailed response to a protester's assertions and the protester does not respond to the agency's position, we deem the issue abandoned. Remington Arms Co., Inc., B-297374, B-297374.2, Jan. 12, 2006, 2006 CPD ¶ 32 at 4 n.4; L-3 Commc'ns Westwood Corp., B-295126, Jan. 19, 2005, 2005 CPD ¶ 30 at 4.

<sup>12</sup> The RFP also required the SEB to consider and, if necessary, adjust an offeror's overall mission suitability score based on any cost realism deficiency. For example, a cost realism deficiency (measured by the difference between the proposed and  
(continued...)

Separately, under the mission suitability evaluation factor, the solicitation also established that NASA's technical evaluation of proposals would include consideration of whether the resources proposed were consistent with the offeror's proposed efforts: if an offeror's proposal demonstrated a lack of "resource realism," it would be evaluated as demonstrating a lack of understanding of, or commitment to, the SCNS requirements. Id. at 00786.

ITT's initial proposal proposed a total staffing of [DELETED] full time equivalents (FTE) for the SCNS core requirements--[DELETED] FTEs for program management and [DELETED] FTEs for the SN requirements.<sup>13</sup> AR, Tab 27, ITT Initial Proposal (Mission Suitability), at 06046. The SEB considered ITT's staffing for program management staffing and certain SN requirements to be insufficient.<sup>14</sup> Id., Tab 40, Initial SEB Report, at 09960, 10034. NASA's subsequent discussions with ITT included concerns regarding the adequacy of the offeror's core requirements staffing levels. Id., Tab 44, NASA Discussions with ITT, at 10189-90. In its FPR, ITT increased its staffing for its core requirements. Specifically, ITT now proposed a staffing level of [DELETED] FTEs--[DELETED] FTEs for program management and [DELETED] FTEs for the SN requirements--and a total of [DELETED] labor hours.<sup>15</sup> AR, Tab 60, ITT FPR (Mission Suitability), at 17619-20, 17635. Like its original proposal, ITT's FPR included bases of estimate (BOE) from all the offeror's team

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(...continued)

evaluated cost, excluding fee) of 0-9.99 percent would result in 0 point adjustment to the offeror's mission suitability score, while a cost realism deficiency of 10-14.99 percent would result in a 50 point adjustment to the offeror's overall mission suitability score. Id. at 00798.

<sup>13</sup> We note that ITT's initial proposal represented, in other places, a staffing level of [DELETED] FTEs for the SN requirements and [DELETED] FTEs for all core requirements. See AR, Tab 29, ITT Initial Proposal (Mission Suitability), at 06176. The agency's evaluation of ITT's initial proposal was based on the lower ([DELETED] FTE) figure. AR, Tab 40, Initial SEB Report.

<sup>14</sup> For example, the SEB believed that the size and complexity of the SCNS contract would require [DELETED] FTEs for program management. Id., Tab 40, Initial SEB Report, at 09960.

<sup>15</sup> ITT's revised proposal also indicated an additional [DELETED] FTEs in indirect labor for SCNS program management. AR, Tab 60, ITT's FPR (Mission Suitability), at 17619. Honeywell's staffing level, by comparison, was [DELETED] FTEs for Year 1, [DELETED] FTEs for Year 2, [DELETED] FTEs for Year 3, similar levels for Years 4-7, and a total of [DELETED] labor hours for the core requirements. AR, Tab 47, Honeywell FPR (Cost), at 11128, 11132. The difference in total labor hours proposed by Honeywell and ITT is approximately [DELETED] percent ([DELETED] / [DELETED] = [DELETED]).



members to explain why the proposed staffing levels for the core requirement tasks were realistic. See id. Tab 62, ITT FPR, at 19830-72, Tab 63 ITT FRP (Cost), at 20764-93. Additionally, the staffing levels utilized by ITT in its cost proposal were consistent with those set forth in the offeror's technical proposal.

In its evaluation of ITT's FPR under the mission suitability factors and subfactors, the SEB found the offeror had remedied the previously-identified staffing weakness, had proposed sufficient staffing to perform all SCNS core requirements, and that the offeror's proposal demonstrated a complete understanding of the SCNS work requirements (i.e., that the proposal did not lack "resource realism"). Id., Tab 80, Final SEB Report, at 23656-65. Separately, under the cost evaluation factor, the agency evaluators found ITT's proposal for the core requirements--in terms of staffing levels as well as the various direct, indirect, and escalation rates proposed--to be realistic and made no adjustment to ITT's proposed costs.<sup>16</sup> Id. at 23710-51.

Honeywell argues that NASA's cost realism evaluation of ITT's proposal was improper with regard to the awardee's staffing levels for the SCNS core requirements (the protester does not challenge the realism of ITT's proposed labor rates, indirect rates, or escalation rates). Based largely on a comparison to the staffing levels that it proposed--in terms of labor hours, FTEs, or both--Honeywell argues that ITT's proposed staffing was insufficient and without adequate rationale. As detailed below, we find the agency's cost realism evaluation of ITT's proposal to be reasonable.

When an agency evaluates proposals for the award of a cost-reimbursement contract (or the cost-reimbursement portion of a contract), an offeror's proposed estimated cost of contract performance is not considered controlling since, regardless of the costs proposed by the offeror, the government is bound to pay the contractor its actual and allowable costs. Magellan Health Servs., B-298912, Jan. 5, 2007, 2007 CPD ¶ 81 at 13; Metro Machine Corp., B-295744, B-295744.2, Apr. 21, 2005, 2005 CPD ¶ 112 at 9; see FAR § 16.301. Consequently, a cost realism analysis must be performed by the agency to determine the extent to which an offeror's proposed costs represent what the contract costs are likely to be under the offeror's unique technical approach, assuming reasonable economy and efficiency. FAR §§ 15.305(a)(1), 15.404-1(d)(1), (2); The Futures Group Int'l, B-281274.2, Mar. 3, 1999, 2000 CPD ¶ 147 at 3.

A cost realism analysis is the process of independently reviewing and evaluating specific elements of each offeror's cost estimate to determine whether the estimated proposed cost elements are realistic for the work to be performed, reflect a clear

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<sup>16</sup> Because of its cost realism determination regarding ITT's proposal, the SEB also did not make any related adjustment to the offeror's overall mission suitability score. Id. at 23655, 23750.

understanding of the requirements, and are consistent with the unique methods of performance and materials described in the offeror's proposal. FAR § 15.404-1(d)(1); Advanced Commc'n Sys., Inc., B-283650 et al., Dec. 16, 1999, 2000 CPD ¶ 3 at 5. An offeror's proposed costs should be adjusted when appropriate based on the results of the cost realism analysis. FAR § 15.404-1(d)(2)(ii). Our review of an agency's cost realism evaluation is limited to determining whether the cost analysis is reasonably based and not arbitrary, and adequately documented. See Magellan Heath Servs., supra.

As a preliminary matter, it is important to note that the RFP required the agency to perform two, separate evaluations regarding offerors' proposed staffing levels. First, under the mission suitability factor, the agency was required to determine if the proposed staffing plan was adequate and demonstrated an understanding of the SCNS requirements. Second, under the cost evaluation factor, the solicitation required the agency to evaluate the cost realism of each offeror's proposal.

We conclude that NASA's evaluation of ITT's proposed staffing—from both a technical and a cost standpoint—was reasonable. First, the record reflects that NASA was fully aware of ITT's revised staffing levels for the SCNS core requirements—[DELETED] FTEs and [DELETED] labor hours. The record also reflects the agency reasonably evaluated ITT's proposed staffing levels against the SCNS work requirements and determined the staffing sufficient to perform the work. Importantly, all staffing weaknesses originally identified by the SEB—both as to program management and specific SN requirements—were addressed by ITT in its revised proposal. For example, ITT's program management staffing increased from [DELETED] FTEs to [DELETED] FTEs; by comparison, the agency evaluators had believed that [DELETED] FTEs would be required here. Similarly, the agency reasonably found ITT's revised staffing levels for the SN requirements to be adequate. Having determined that ITT's staffing levels were adequate from a technical standpoint, the agency then determined the staffing levels and associated costs were also realistic as part of its cost realism evaluation.

The protester's principal argument—that ITT's staffing levels were “dramatically” lower than its own—reflects a misunderstanding of what is required as part of a cost realism evaluation.<sup>17</sup> There is no general requirement that an agency's cost realism evaluation “normalize” the staffing levels that the offerors propose to each other or to government estimates, see, e.g., Integrated Mgmt. Res. Group, Inc., B-400550, Dec. 12, 2008, 2008 CPD ¶ 227 at 7 n.6; Metro Mach. Corp., B-297879.2, May 3, 2006, 2006 CPD ¶ 80 at 10; Information Ventures, Inc., B-297276.2 et al., Mar. 1, 2006, 2006 CPD ¶ 45 at 9, and the fact that one offeror proposes higher staffing levels than

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<sup>17</sup> To the extent Honeywell argues that the differences in staffing (i.e., [DELETED] percent in total labor hours) were so disparate as to put the agency on notice that ITT's staffing levels were unrealistic, we disagree.

another offeror does not by itself indicate that the costs as proposed are not realistic. Rather, the cost realism evaluation is to ensure that each offeror's proposed costs, including staffing levels, are realistic for the work to be performed, consistent with the methods of performance described in the offeror's technical proposal. See Integrated Mgmt. Res. Group, Inc., supra.

Honeywell essentially argues that its own understanding of the required staffing is superior to that of the agency. Accordingly, Honeywell reasons that ITT's proposal to perform the contract requirements using a total staffing level lower than that proposed by Honeywell should have been evaluated as unacceptable. Given ITT's explanation of how it would perform the program management and SN requirements, we cannot conclude that the agency was unreasonable in its assessment that ITT submitted an acceptable staffing plan and could perform the core requirements with [DELETED] FTEs. Honeywell's protest challenging the agency's evaluation constitutes, at best, mere disagreement with the agency's judgment.

#### Evaluation of Past Performance

Honeywell protests the agency's evaluation of the offerors' past performance. Among its numerous challenges, Honeywell argues that the relevance and quality of the contracts performed by ITT itself do not justify the evaluation rating NASA assigned. The protester also alleges that the SEB improperly failed to fully credit the past performance of Honeywell's major subcontractor, [DELETED], in the area of systems engineering. Protest, Dec. 4, 2008, at 32-42. As detailed below, we find the agency's evaluation of ITT's past performance to be unreasonable.

The RFP instructed offerors to provide information for all relevant contracts and subcontracts for themselves and any major subcontractors, of at least \$50 million for the prime contractor and at least \$10 million for major subcontractors, that were currently being performed or had been completed with the past 3 years.<sup>18</sup> RFP § L at 00776. The RFP also directed offerors and major subcontractors to provide questionnaires to references in order to establish their record of past performance. Id. at 00778-79. As to the evaluation of past performance, the solicitation established the agency would consider two components: relevance and performance (quality). RFP § M at 00802. In assessing relevance, section M of the solicitation required NASA to "consider the degree of similarity in size, content, and complexity" between an offeror's past performance information and the solicitation requirements. Id. The agency's past performance evaluation adjectival ratings, as set forth in the solicitation, were also based on both the relevance and performance of an offeror's

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<sup>18</sup> The solicitation instructions did, however, permit offerors to submit additional information at their discretion if they considered such information necessary to establish a record of relevant past performance. RFP § L at 00775.

past performance information. For example, in order to be rated “excellent,” an offeror’s past performance would have to be deemed to be “highly relevant” and of “exemplary performance.”<sup>19</sup> Id. at 00802-03.

The SEB considered seven contracts as relevant to its evaluation of Honeywell’s past performance—four contracts performed by Honeywell itself, and three contracts performed by its proposed subcontractor [DELETED]. The SEB found Honeywell’s references to be “highly relevant” in size, content, and complexity to the SCNS requirements, and the offeror’s overall performance quality to be very effective; while Honeywell demonstrated excellent performance in performing mission operations and maintenance activities, it demonstrated less than excellent performance in the areas of systems engineering and development efforts. The SEB also found that although [DELETED] had demonstrated excellent performance in the area of systems engineering, it was prime contractor Honeywell that was proposed to lead and perform the majority of the systems engineering effort. Based on its relevance and performance determinations, the SEB rated Honeywell’s past performance as “very good.” AR, Tab 80, Final SEB Report, at 23752-54.

The SEB considered a total of eleven contracts as relevant to its evaluation of ITT’s past performance. These were two for prime contractor ITT—its MSP systems engineering support contract with GSFC and its joint spectrum center (JSC) contract—and nine contracts of various major subcontractors.<sup>20</sup> ITT’s MSP contract had a dollar value of \$40 million, with [DELETED] employees.<sup>21</sup> AR, Tab 62, ITT FPR, at 20070-74. By contrast, ITT’s proposed cost for the SCNS contract was approximately \$[DELETED], with a total of [DELETED] FTEs—[DELETED] FTEs for the core requirements and an additional [DELETED] FTEs for the GN (ID/IQ) requirements. Id. at 18733. The SEB found ITT’s MSP contract to be “very relevant” with excellent performance. In its report the SEB noted the scope of the MSP contract, but did not mention its size or why it was deemed relevant despite the fact

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<sup>19</sup> An offeror’s past performance could also be determined to be “very relevant,” “relevant,” “somewhat relevant,” or “not relevant.” Id. The RFP did not address the situation where the relevance on an offeror’s past performance fell into one adjectival rating, but the quality of performance fell into another adjectival rating.

<sup>20</sup> Offeror ITT (ITT – Advanced Engineering & Sciences) proposed sister division, ITT Systems Division (ITT-SD) as one of its major subcontractors. AR, Tab 62, ITT FPR at 18427. Throughout the course of its evaluation the agency considered ITT to be the prime contractor and ITT-SD to be one of the offeror’s major subcontractors.

<sup>21</sup> ITT’s proposal stated the MSP contract value was approximately \$38.7 million as of January 4, 2008. AR, Tab 62, ITT FPR, at 20070. NASA considered the MSP contract to be \$40 million in value for purposes of its evaluation. Id., Tab 80, Final SEB Report, at 23755.

that it represented only some [DELETED] percent of the SCNS contract effort.<sup>22</sup> The SEB considered the other past performance reference for ITT (as the prime), its JSC contract, to be “somewhat relevant”<sup>23</sup> with good performance, while the major subcontractor contracts ranged from “highly relevant” to “relevant.” Overall, the SEB found ITT’s past performance to be “highly relevant” in size, content, and complexity relative to the SCNS requirements. The agency evaluators also found ITT’s performance quality on its most relevant contracts to be mostly excellent.<sup>24</sup> Based on its relevance and performance determinations, the SEB rated ITT’s past performance as “excellent.” AR, Tab 80, Final SEB Report, at 23755-58.

The SEB was aware that the SCNS SOW involved several different types of tasks, such as program management, operation and maintenance, developmental, and systems engineering tasks. The SEB was also aware, based on the offeror’s proposal, what types of tasks ITT (as the prime) and the major subcontractors each were to perform. For example, ITT (prime) was to perform most if not all of the [DELETED], little if any of the [DELETED], and a majority of the [DELETED].<sup>25</sup> AR, Tab 80, Final SEB Report, at 23711; Tab 81, SEB Presentation to SSA, at 23840; see also Tab 61, ITT FPR (Cost) at 17873-78, 17886-88. The agency was also aware of the size of the efforts to be performed by ITT (prime) and its major subcontractors. For example, ITT (prime) was expected to incur approximately [DELETED] percent of the core requirements costs ([DELETED]), [DELETED] percent of the ID/IQ costs, and [DELETED] percent of its total proposed SCNS costs. Id., Tab 80, Final SEB Report, at 23711; AR, Dec. 15, 2008, at 28.

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<sup>22</sup>  $\$40,000,000 / \$[DELETED] = [DELETED]$ . Likewise, the MSP contract had a staffing level of 5.4 percent of the SCNS contract effort ( $[DELETED] / [DELETED] = .0541$ ).

<sup>23</sup> ITT’s JSC contract primarily involved electromagnetic spectrum engineering services, while there is no requirement for electromagnetic spectrum engineering services as part of the SCNS contract. Contracting Officer’s Statement, Dec. 15, 2008, at 10. A determination that an offeror’s experience is “somewhat relevant” to the RFP requirements corresponds to an adjectival rating of “fair.” RFP § M at 00803.

<sup>24</sup> The agency considered ITT’s MSP contract, but not its JSC contract, to be among the “most relevant” contracts when determining the offeror’s overall performance quality. Contracting Officer’s Statement, Dec. 15, 2008, at 10; AR, Dec. 15, 2008, at 27.

<sup>25</sup> The agency acknowledges that, by contrast, subcontractor ITT-SD was to have a relatively small role on the ITT team with respect to [DELETED]—some with regard to the [DELETED] and none with regard to the [DELETED]. Contracting Officer’s Statement, Nov. 24, 2008, at 46; AR, Nov. 24, 2008, at 40.

Honeywell argues the agency's evaluation of ITT's past performance was unreasonable. The protester contends that NASA could not and/or should not have relied on ITT's MSP contract in its past performance evaluation, given both the instruction provisions of the RFP and the prior contract's lack of similarity in size. Honeywell also alleges the only other prior contract for ITT (prime), being found only "somewhat relevant" with good performance, does not support the agency's rating of the awardee's past performance as excellent.

Where a solicitation requires the evaluation of offerors' past performance, we will examine an agency's evaluation to ensure that it was reasonable and consistent with the solicitation's evaluation criteria. The MIL Corp., B-297508, B-297508.2, Jan. 26, 2006, 2006 CPD ¶ 34 at 10; Hanley Indus., Inc., B-295318, Feb. 2, 2005, 2005 CPD ¶ 20 at 4. The critical question is whether the evaluation was conducted fairly, reasonably, and in accordance with the solicitation's evaluation scheme. Clean Harbors Envtl. Servs., Inc., B-296176.2, Dec. 9, 2005, 2005 CPD ¶ 222 at 3. The agency's past performance evaluation of ITT here does not meet this standard.

As a preliminary matter, we do not think that the agency here was precluded from considering ITT's MSP contract for past performance evaluation purposes simply because its value was below the \$50 million figure referenced in section L of the RFP. As noted above, while the RFP instructed offerors to submit past performance information on relevant contracts of at least \$50 million, it also expressly permitted them to submit additional information if they considered it necessary to establish a record of relevant past performance. RFP § L at 00775-76.

Once having decided to consider ITT's MSP contract, however, the agency clearly was required to evaluate the relevance of that contract consistent with the evaluation criteria in the RFP, *i.e.*, the degree of similarity in size, content and complexity between an offeror's past performance information and the RFP requirements. There is nothing in the contemporaneous record to suggest that NASA engaged in any such analysis concerning the relative size of ITT's MSP contract and the size of the RFP requirements. Rather, the SEB report indicates the evaluators' determination that ITT's MSP contract was "very relevant" was based entirely on the type of services involved in that contract.<sup>26</sup> The extremely low dollar value (and staffing level) of the MSP contract relative to those of the SCNS requirements clearly raise a question as to the degree to which the MSP contract reasonably may be regarded as similar in size to the RFP requirements, such that it properly could be considered in evaluating ITT's past performance. See Continental RPVs, B-292768.2, B-292678.3, Dec. 11, 2003, 2004 CPD ¶ 56 at 8 (finding prior contracts no larger than

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<sup>26</sup> While the contracting officer asserts, in a statement submitted after the filing of Honeywell's protest, that the SEB did consider the size of the MSP contract, Contracting Officer's Statement, Dec. 15, 2008, at 9, we find this statement also fails to explain how a contract so dramatically smaller was considered "very relevant."

4 percent of the solicitation requirements were not similar or relevant); Si-Nor, Inc., B-292748.2 et al., Jan. 7, 2004, 2004 CPD ¶ 10 at 16-17 (finding in part a prior contract which represented less than 7 percent of the solicitation requirements was not similar in size, scope, and complexity). Quite simply, the record here lacks explanation as to why the SEB found the MSP contract to be “very relevant” notwithstanding its extremely small size relative to the RFP requirements. We fail to see, and the record fails to reflect, how NASA determined that a contract similar as to size but not as to content (i.e., ITT’s JSC contract) was only “somewhat relevant,” while, by contrast, a contract similar as to content but not as to size (i.e., ITT’s MSP contract) was “very relevant.”

We recognize that the agency’s evaluation of ITT’s past performance also included nine other contracts for its major subcontractors, many of which the SEB found to be “highly relevant” and having excellent performance. The record reflects, however, that ITT (prime) had only two contract references: the JSC contract which NASA found of such limited relevance that it admittedly did not consider it in the evaluation of the offeror’s performance; and the MSP contract which, as detailed above, was significantly smaller in size than the RFP requirements. In this regard, ITT (prime) was to perform all the program management requirements, a large majority of the systems engineering requirements, and [DELETED] percent of the total SCNS contract. As a result, based on the current record, the agency’s conclusion that ITT had “highly relevant” past performance lacks a reasonable basis, given that it is based in material part on consideration of the MSP contract.

Honeywell also argues that NASA’s evaluation of Honeywell’s own past performance was unreasonable because the evaluators failed to give proper credit to the past performance of its major subcontractor, [DELETED], in the area of systems engineering. The SEB found that [DELETED] had demonstrated both “highly relevant” and excellent performance in the area of systems engineering. The protester maintains the agency evaluators failed to give proper weight to that performance, however, on the mistaken ground that Honeywell (not [DELETED]) was proposed to lead and perform the majority of the systems engineering effort. Honeywell contends its proposal gave [DELETED] a leadership role with regard to systems engineering, as evidenced by the assignment of the SCNS [DELETED] position to [DELETED] and the fact that [DELETED] of [DELETED] engineers for SN sustaining engineering task are [DELETED] personnel. Protest, Oct. 20, 2008, at 33-35; Protest, Dec. 4, 2008, at 41-42.

Contrary to the protester’s assertions, Honeywell’s proposal indicated that it would lead and perform the majority of the systems engineering and development efforts. For example, Honeywell’s organizational chart indicated its employees would serve in most engineering leadership roles (e.g., network operations division manager, network project division manager, systems engineering and hardware engineering department manager, functional leaders for the software engineering and hardware engineering departments). AR, Tab 49, Honeywell FPR, at 12671. Honeywell’s

proposal also indicated its [DELETED] position would be staffed part-time by [DELETED] and part-time by another proposed subcontractor, [DELETED]. Id. at 14601-02. Further, Honeywell's cost proposal indicated that it (not [DELETED]) would provide the majority of systems engineers for the core requirements, the ID/IQ tasks, and the RTO TIPs. In its evaluation of the protester's past performance, the SEB took into account the roles Honeywell and [DELETED] each would play in the performance of the SCNS contract when determining the relevance of their prior contracts. Id., Tab 80, Final SEB Report, at 23754.

We need not decide the exact percentage of systems engineering work to be performed each by [DELETED] and Honeywell to conclude the agency reasonably determined that Honeywell would lead and perform the majority of the SCNS systems engineering and development efforts as part of the evaluation of the offeror's past performance. Honeywell's proposal clearly indicated its employees would fill the majority of engineering leadership positions. The protester does not dispute that the [DELETED] position was to be split between [DELETED] and another subcontractor. Protest, Dec. 4, 2008, at 41-42. Moreover, even if [DELETED] of [DELETED] systems engineering positions for the SN sustaining engineering task are [DELETED] employees, that means that [DELETED] of [DELETED] (or 57 percent) of the positions here are not [DELETED] employees. In sum, the agency here properly considered the roles to be played by Honeywell and [DELETED] in the performance of the SCNS in making the past performance evaluation.

## CONCLUSION AND RECOMMENDATION

The record shows that in evaluating ITT's past performance, the agency relied in material part on ITT's MSP contract, without explaining why, given its low dollar value, that contract reasonably may be regarded as similar in size to the effort under the contract to be awarded here, such that, under the terms of the RFP, it properly could be considered in the evaluation. As a result, we sustain the protest on this basis.

As noted above, competitive prejudice is an essential element of any viable protest, and we will sustain a protest only if there is a reasonable possibility that the protester was prejudiced by the agency's action. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3. The record here shows that this was a close competition, with similar technical and past proposal ratings for both offerors' proposals, as well as a relatively small difference in evaluated costs between the two. Accordingly, while we sustain the protest only with regard to the challenge to the evaluation of ITT's past performance, it is clear that this element of the evaluation could have affected the outcome of the competition, and therefore reasonably may be regarded as prejudicial to Honeywell.



We recommend that the agency reevaluate ITT's past performance consistent with our decision here and, based on that reevaluation, make a new source selection determination.<sup>27</sup> If, after reevaluation, Honeywell's proposal is determined to represent the best value to the government, the agency should terminate ITT's contract for the convenience of the government and make award to Honeywell. We also recommend that Honeywell be reimbursed the costs of filing and pursuing the protest, including reasonable attorneys' fees, limited to the costs relating to the ground on which we sustain the protest. 4 C.F.R. § 21.8(d)(1). Honeywell should submit its certified claim for costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained in part and denied in part.

Gary L. Kepplinger  
General Counsel

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<sup>27</sup> Honeywell also protests that NASA's evaluation of ITT's past performance improperly failed to take into account ITT's space lift range services (SLRS) contract—that such information was simply “too close at hand” to be ignored by the agency evaluators. Protest, Oct. 20, 2008, at 35. We recommend that the agency's reevaluation of ITT's past performance also include consideration of ITT's SLRS contract, as it is now part of the record.