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Decision

Matter of: Northeast MEP Services, Inc.

File: B-285963.5; B-285963.7; B-285963.8

Date: January 5, 2001

William A. Shook, Esq., Kelley P. Doran, Esq., and Gary J. Campbell, Esq., Preston Gates Ellis & Rouvelas Meeds, for the protester.

Jay P. Urwitz, Esq., David A. Wilson, Esq., Barry J. Hurewitz, Esq., Aimen Mir, Esq., and Karen L. Tinsky, Esq., Hale and Dorr, for the Center for Technology Commercialization, the intervenor.

Bernard J. Roan, Esq., National Aeronautics and Space Administration, for the agency.

Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the evaluation of technical proposals is denied where the contemporaneous evaluation record, hearing testimony of the evaluation board chair, and arguments of the parties establish that the agency's evaluation was reasonable and in accord with the evaluation criteria.

2. Agency's assessment of the awardee's past performance as very good and the protester's as good was reasonable, where the agency considered the awardee's lower-rated performance of the incumbent contract together with its exceptional ratings of other significant, relevant contracts and found that the protester's past performance did not include efforts that were comparable in size, scope and complexity to the work to be awarded under the solicitation.

DECISION

Northeast MEP Services, Inc. (NEMEP) protests the award of a contract to the Center for Technology Commercialization (CTC) under request for proposals (RFP) No. RFP2-37066-CDT, issued by the National Aeronautics and Space Administration (NASA) for the operation and maintenance of the Northeast Regional Technology Transfer Center (RTTC). NEMEP challenges the evaluation of its technical proposal.

We deny the protest.

Under its Commercial Technology Program, NASA seeks to disseminate and encourage the commercialization of the agency's technology and information. To accomplish this, NASA operates a national network of six RTTCs, each of which has responsibility for an assigned region (i.e., Northeast, Mid-Atlantic, Southeast, Midwest, Mid-Continent, and Far West). The RTTCs link with affiliated organizations (federal, state, and local entities and non-profit institutions) having similar technology transfer and industrial development objectives, and establish relations with industry and trade groups to promote and make available the transfer of technology and information. Agency Report, Tab 2, Acquisition Plan, at 1-2.

The RFP, as issued, contemplated the award of multiple, cost-no-fee contracts to operate and maintain the six RTTCs.¹ Offerors were informed that NASA intended to award a separate contract for each region. RFP § M.2(a) at 67. A performance-based statement of work (SOW) was provided that described the RTTC's required capabilities and operations. Each RTTC was

established as a node for a regional technology transfer network, comprised of regional infrastructure participants which shall perform on a no profit or fee basis. As such, each NASA RTTC is encouraged to view itself as a core of a regional consortium of cooperating organizations (such as state and local economic development entities, universities, high-tech research parks, incubators, business and venture capital organizations, and other appropriate entities). The NASA RTTC will contribute materially to the transfer, application and commercial use of U.S. developed technologies to enhance the public and private interests of the region.

RFP attach. J.1(a)1, SOW, at 3.

The RFP stated that award would be based upon a cost/technical tradeoff without conducting discussions. RFP §§ M.2(a)(2), M.3, at 67, 74-75. The three evaluation factors (and subfactors for the mission suitability factor) were identified as set out in the chart on the following page:

¹ NASA believed that "these services [could not] be performed on a fixed-price basis due to the uncertainty of requirements." Agency Report, Tab 2, Acquisition Plan, at 11. By amendment No. 0002, the agency permitted the submission of proposals on "other-than a cost reimbursement basis," but required offerors who did so to submit cost data sufficient for the agency to perform a cost realism analysis. RFP amend. 0002, § L.5(3) at 3.

Mission Suitability	
	Understanding the requirement
	Management approach
	Small disadvantaged business participation
Past Performance	
Cost	

Offerors were informed that the mission suitability factor was slightly more important than the past performance factor, and that each of these factors was significantly more important than the cost factor. RFP § M.3(c) at 75. Narrative descriptions of the evaluation factors were provided, as well as numerous elements and sub-elements for each of the mission suitability subfactors. For example, under the understanding the requirement subfactor, the RFP provided that NASA would evaluate the offeror's technical plan (an element) and under that element would evaluate (as a sub-element) the offeror's proposed "[d]evelopment of working relationships with U.S. industry to access data, information sources and technical expertise." RFP § M.2 at 69.

The RFP provided that the mission suitability factor would be point-scored on a 1,000-point scale. Within the mission suitability factor, the understanding the requirement subfactor had an assigned maximum score of 500 points, the management approach subfactor 450 points, and the small disadvantaged business participation subfactor 50 points.² RFP § M.3 at 75. The past performance factor was to be adjectivally rated on a scale ranging from "excellent" to "fails." RFP § M.2 at 73.

With respect to the cost factor, the RFP provided for a cost realism evaluation to assess the probable cost and a "level of confidence" for each proposal. RFP § M.2(3) at 74. The RFP also informed offerors that the mission suitability factor score would be "adjusted downward by a specified number of points depending upon the percentage difference (positive or negative) between the Government calculation of

² The technical proposals were also adjectivally rated from "excellent" to "poor" under the mission suitability factor. A "good" rating, which was identified as having a numerical equivalent of 510 to 700 points, reflected a proposal having no deficiency, showing a reasonably sound approach, and having weaknesses that do not significantly detract from the offeror's response. A "poor" rating, which was identified as 0 to 300 points, reflected a proposal with one or more deficiencies or significant weaknesses demonstrating a lack of overall competence or requiring a major proposal revision. Agency Report, Tab 45, Presentation Chart for the Northeast RTTC, at 12.

probable cost and the offeror's proposed cost." RFP §§ M.2, M.3 at 74-75. The reduction in score ranged from 0 points for percentage differences of less than 5 percent to a 300-point decrease for percentage differences of greater than 30 percent. As amended, the RFP provided that if an offer was submitted "on an other-than cost reimbursement basis," any downward adjustment in an offeror's mission suitability score, as a result of the agency's cost realism evaluation, would be based upon the difference between the offeror's estimated cost and the government's evaluated probable cost. RFP amend. 0002, § L.5(3), at 4.

NASA received 22 proposals for the different regional contracts. Three proposals, including those of NEMEP and CTC (the incumbent contractor), were submitted for the Northeast RTTC contract. In addition, NASA received an offer from the U.S. Technology Consortium (USTEC) for a single, national contract to operate all six RTTCs. Contracting Officer's Statement at 3. USTEC is comprised of a group of six Manufacturing Extension Partnership (MEP) entities and MEP-related entities, including NEMEP.³ An MEP is a non-profit entity, operating under the auspices of the National Institute of Standards and Technology to provide help to small- and medium-sized local manufacturing firms in a wide variety of business and technical areas. See <<http://www.mep.nist.gov/index2.html>>. NEMEP operates MEP centers in Maine, Massachusetts, and New Hampshire.

The proposals for each region were evaluated by a regional source evaluation committee (SEC). Proposals for the Northeast RTTC were evaluated at the Goddard Space Flight Center, which administers the Northeast RTTC contract. Each member of the SEC for the Northeast region individually evaluated NEMEP's, CTC's, and the third offeror's proposals. The evaluators documented their evaluation by completing evaluation and rating forms by hand. The SEC then met to discuss their findings and arrive at a consensus judgment regarding the proposals. Hearing Transcript (Tr.) at 21. The consensus judgment was documented in a summary evaluation report for each offeror. See, e.g., Agency Report, Tab 34, Consensus Evaluation of NEMEP's proposal. After reaching the consensus judgment, the evaluators' individual evaluations and ratings were not retained.⁴ Tr. at 33.

³ Each of the six MEP entities comprising USTEC submitted a "stand-alone" proposal for its respective region. Agency Report, Tab 54, Source Selection Decision, at 4.

⁴ NASA informed us that the Goddard Space Flight Center "generally disposes or destroys" the evaluators' individual documents after a consensus evaluation board judgment is achieved. Tr. at 33. We find troubling the routine destruction of documents such as these, where the retention of this documentation, at least until the agency can determine whether its evaluators' judgment will be challenged, does not work any undue hardship upon the agency.

NEMEP proposed a \$[DELETED] million fixed-price contract, and CTC proposed a \$7.13 million cost-no-fee contract. The offers were evaluated as set out in the table on the following page:

Offeror	Mission Suitability (1,000 pts.)	Past Performance	Cost (in millions)		
			Proposed	Probable	Confidence
CTC	Good/690	Excellent	\$7.13	\$[DELETED]	High
NEMEP	Fair/349	Good	\$[DELETED] ⁵	\$[DELETED]	Moderate
A	Poor/163	Neutral	\$[DELETED]	\$[DELETED]	Low

CTC's significantly higher mission suitability score reflected the SEC's assessment of CTC's proposal as containing 12 strengths (4 of which were significant) and only 3 weaknesses (2 significant) under this factor. In contrast, NEMEP's proposal was assessed under the mission suitability factor as containing only 4 strengths (1 significant) and 20 weaknesses (7 significant). *Id.* Among the significant weaknesses in NEMEP's offer was the SEC's concern that NEMEP had proposed USTEC as a subcontractor performing a number of important services, where USTEC's future viability was unclear to the evaluators, given the consortium's failure to receive a national contract to operate all the RTTCs.⁶ Other significant weaknesses were stated to be NEMEP's failure to address what steps it would follow in cultivating relationships with U.S. industry and NEMEP's failure to provide a clear high-level interface with the Goddard Space Flight Center. Agency Report, Tab 34, Consensus Evaluation Report for NEMEP.

The source selection authority (SSA) was briefed as to each of the regional SECs' findings. With regard to the Northeast region, the SSA concluded that CTC's proposal was the most advantageous to the government. Award was made to CTC, and NEMEP and USTEC protested to our Office (file numbers B-285963; B-285963.2; B-285963.3; B-285963.4). Prior to the receipt of the agency's report on that protest, NASA informed us that it was withdrawing its selection decision for the Northeast region and would reassess the offerors' proposals. On September 1, 2000, we dismissed these protests as academic.

⁵ NEMEP proposed a firm, fixed-price of \$[DELETED] million, although its cost data showed an estimated \$[DELETED] million estimated cost. Agency Report, Tab 34, Defense Contract Audit Agency (DCAA) Audit Report of NEMEP's Proposal, at 3.

⁶ USTEC's offer to operate all the RTTCs received a rating of poor/288 points under the mission suitability factor and of good under the past performance factor. Agency Report, Tab 41, Presentation Charts for the Far West RTTC, at 18.

The reassessment of proposals in the Northeast region resulted in some changes in the evaluation of CTC's and NEMEP's proposals. NASA downgraded CTC's past performance rating from excellent to very good [DELETED]. Also, the agency recognized that its initial evaluation had treated NEMEP's fixed price as if it were cost reimbursable, so it amended its evaluation to reflect NEMEP's fixed price. NASA also downgraded NEMEP's mission suitability score to reflect the increased difference between NEMEP's estimated costs and the agency's probable cost determination caused by the agency's determination that two positions offered in NEMEP's proposal were unnecessary. Contracting Officer's Statement at 19-20. As a result of the reassessment, the agency evaluated CTC's and NEMEP's proposals as follows:

Offeror	Mission Suitability (1,000 pts.)	Past Performance	Cost (in millions)		
			Proposed	Probable	Confidence
CTC	Good/690	Very Good	\$7.13	\$(DELETED)	High
NEMEP	Poor/299	Good	\$(DELETED)	\$(DELETED)	Moderate

The SSA was again briefed as to the evaluation findings in the Northeast region. The SSA accepted the SEC's findings, noting that:

NEMEP proposed functions depend on a USTEC network which, if its network partners are not selected in all or most of the other regions, may not be able to fulfill the requirement. Among other serious flaws, the proposal does not address what steps will be followed in cultivating relationships, nor does it identify critical issues related to the commercialization of technology as required in the RFP. In addition, NEMEP's anticipated incurred costs reflect a serious lack of cost realism, differing by over 14% from its probable incurred costs.

Agency Report, Tab 54, Source Selection Decision, attach. E, at 2. The SSA again concluded that CTC's proposal was the most advantageous to the government:

Starting with the most important factor, Mission Suitability, CTC's proposal best expresses an understanding of the Northeast RTTC mission functions. The proposal is well balanced, and brings to bear a range of capabilities that [NEMEP's and the other offeror's] do not. CTC's much superior technical approach and capabilities—as well as its management structure and approach—translate into more and better products and services, and less performance risk, than the other proposals. CTC had a marginal advantage in Past Performance ratings over the other two offerors. I found the clearly superior

technical proposal of CTC to be well worth the modest cost/price difference with [NEMEP's] proposal

Agency Report, Tab 54, Source Selection Decision, at 6. This protest followed a written debriefing.

NEMEP challenges virtually every one of the agency's assessed weaknesses of its proposal, contending that the evaluated weaknesses are factually inaccurate and reflect unequal treatment of NEMEP's and CTC's proposals. NEMEP also complains that NASA's contemporaneous evaluation documentation is nothing more than conclusory lists of asserted strengths and weaknesses, which do not demonstrate the method by which points were assigned under the mission suitability subfactors nor support the reasonableness of the agency's evaluation.

In reviewing protests challenging the evaluation of proposals, we do not conduct a new evaluation or substitute our judgment for that of the agency but examine the record to determine whether the agency's judgment was reasonable and in accord with the RFP evaluation criteria. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. Judgments are by their nature often subjective; nevertheless, the exercise of judgment in the evaluation of proposals must be reasonable and bear a rational relationship to the announced criteria upon which competing offers are to be selected. Southwest Marine, Inc.; American Sys. Eng'g Corp., B-265865.3, B-265865.4, Jan. 23, 1996, 96-1 CPD ¶ 56 at 10.

In order for us to review an agency's evaluation judgment, an agency must have adequate documentation to support its judgment. Id. While point scores are useful as guides to decision-making, they must be supported by documentation of the relative differences between proposals, their strengths, deficiencies, weaknesses and risks. Federal Acquisition Regulation § 15.305(a); Century Envtl. Hygiene, Inc., B-279378, June 5, 1998, 98-1 CPD ¶ 164 at 4. While an agency is not required to retain every document or worksheet generated during its evaluation of proposals, the agency's evaluation must be sufficiently documented to allow review of the merits of a protest. KMS Fusion, Inc., B-242529, May 8, 1991, 91-1 CPD ¶ 447. Where an agency fails to document or retain evaluation materials, it bears the risk that there may not be adequate supporting rationale in the record for us to conclude that the agency had a reasonable basis for the source selection decision. Southwest Marine, Inc.; American Sys. Eng'g Corp., supra, at 10.

In determining the rationality of an agency's evaluation and award decision, we do not limit our review to contemporaneous evidence, but consider all the information provided, including the parties' arguments, explanations, and hearing testimony. Id. While we consider the entire record, including the parties' later explanations and arguments, we accord greater weight to contemporaneous evaluation and source selection material than to arguments and documentation prepared in response to

protest contentions. Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15.

We conducted a hearing here because the evaluation documentation prepared and retained by NASA did not adequately explain the agency's evaluation of NEMEP's and CTC's proposals. As noted, the primary discriminator between CTC's and NEMEP's proposals was the respective mission suitability scores received by the two firms; CTC's proposal was assessed as being good (with 690 of a possible 1,000 points), while NEMEP's proposal was assessed as being poor (with 299 points). However, as asserted by the protester, NASA's consensus evaluation documents for the mission suitability factor stated NEMEP's and CTC's strengths and weaknesses in a conclusory fashion. Although NASA provided additional information in its legal memoranda and contracting officer statements to explain its evaluation and to specifically respond to the protester's contentions that NASA evaluated NEMEP's and CTC's proposals unequally, NEMEP noted that NASA's post-protest documentation should be entitled to less weight than the contemporaneous documentation and questioned whether these agency arguments represented the evaluators' contemporaneous judgment. Accordingly, we received testimony from the chair of the SEC, who testified as to the evaluation board's contemporaneous judgment and specifically addressed four significant weaknesses in NEMEP's proposal.⁷ As explained below, we find from our review of the hearing testimony, parties' arguments, and the evaluation record that the agency's evaluation and selection of CTC's proposal for award was reasonable.

One of the significant weaknesses identified in NEMEP's proposal under the mission suitability factor, and specifically cited by the SSA in his selection decision, was NEMEP's proposed reliance on USTEC to meet some of the contract performance requirements. See Agency Report, Tab 45, Presentation Charts for the Northeast RTTC, at 22; Tab 54, Source Selection Decision, attach. E, at 2. In the written debriefing provided to NEMEP, NASA explained the agency's concern that USTEC, which was formed to compete for a national contract to operate the RTTCs, may not be viable to perform the subcontract, given NASA's determination not to make an award to USTEC. Agency Report, Tab 50, First Debriefing to NEMEP, at 3.

NEMEP argues that NASA unreasonably assumed that USTEC might not have the resources to perform the subcontract to NEMEP and that this assumption was "based on a profound misunderstanding of the operation of USTEC." Protester's Comments at 9. NEMEP argues that, although the award of a national RTTC contract to USTEC would have provided "an important source of funding," each of the USTEC partners was a viable entity that would continue to function. Id. at 10.

⁷ The protester identified three significant weaknesses and we identified an additional one on which testimony would be taken at the hearing.

NEMEP also challenges NASA's determination that USTEC's subcontract with NEMEP would be "major," as characterized by NASA. Id. at 9.

We agree with NASA that NEMEP's proposal indicated that USTEC was to be a significant subcontractor in NEMEP's performance of the RTTC contract. As the SEC chair noted in her testimony, NEMEP's proposal repeatedly referred to specialized services that NEMEP would receive from USTEC. Tr. at 71-74. For example, NEMEP proposed the [DELETED] that was "developed, maintained, and upgraded by USTEC on behalf of partnering RTTCs."⁸ NEMEP Mission Suitability Proposal at 15. Similarly, NEMEP proposed that it would "subcontract with the USTEC to create a [DELETED]," which would be administered by USTEC. Id. at 29-30. NEMEP also proposed to obtain other services from other companies as subcontractors to USTEC (not NEMEP); for example, the [DELETED] (which USTEC would administer) would actually be operated by [DELETED] and [DELETED] under contracts with USTEC. Id. at 30. Also, NEMEP stated that it would have access to "[DELETED]" through USTEC.⁹ Id. at 49.

We find reasonable NASA's concern that NEMEP's reliance on USTEC posed significant risk to the agency. In its proposal, NEMEP represented that USTEC was formed by NEMEP and five other MEPs to seek a "performance-based national network of RTTCs." Id. at 1. NEMEP explained to NASA that NEMEP, "like its partnering RTTCs, [has] budgeted [DELETED] percent of the contract value to subcontract USTEC." Id. at 49. In our view, NASA reasonably concluded from these proposal representations that the MEPs formed USTEC to perform a national network of RTTCs and would use that contract performance to finance USTEC. Although it is true that the MEPs comprising USTEC will have their own continuing existence, this does not alleviate concerns, flowing from NEMEP's proposal description, whether the new entity, USTEC, would necessarily continue if the purpose for the venture failed, or whether USTEC, without the national RTTC funding, would have sufficient funds to satisfy the promises made for it in NEMEP's proposal.

Another significant weakness identified in NEMEP's proposal under the mission suitability factor, and cited by the SSA in his selection decision, was that NEMEP did not identify what steps would be followed to develop working relationships with industry. Agency Report, Tab 45, Presentation Charts for the Northeast RTTC, at 22; Tab 54, Source Selection Decision, attach. E, at 2. Offerors were required in their technical plans to describe the understanding of, and approach to, the

⁸ The [DELETED] constituted the only evaluated significant strength in NEMEP's proposal. See Agency Report, Tab 45, Presentation Charts for the Northeast RTTC, at 22.

⁹ [DELETED].

“[d]evelopment of working relationships with U.S. industry to access data, information sources and technical expertise.” RFP § L.5 at 53. The RFP also provided that this requirement would be evaluated under the technical plan element of the understanding the requirement subfactor of the mission suitability factor. RFP § M.2 at 69. NASA found that NEMEP’s proposal included a general description of the organizations that the firm would target, but provided only a limited description of how the firm would forge and cultivate relationships; in addition, NASA was concerned that NEMEP’s designation of two “important industry groups” at the Goddard Space Flight Center—the [DELETED] and [DELETED]—with which NEMEP stated it would form relationships, did not show understanding of this requirement because these groups have nothing to do with the technology to be transferred under the contract. Agency Report, Tab 50, First Debriefing to NEMEP, at 4; Tr. at 51-53.

NEMEP disagrees that its proposal does not adequately demonstrate its understanding and approach to cultivating relationships with industry. NEMEP contends that NASA treated NEMEP and CTC unequally under this evaluation criterion, arguing that the two firms provided similar information describing how they would cultivate relationships.

We find no basis from our review of the record to find unreasonable NASA’s assessment of a significant weakness in NEMEP’s proposal under this factor or to find that NASA treated NEMEP and CTC unequally in this respect. Rather, we find from review of the proposals and evaluation documents that NASA reasonably found that CTC provided more detail addressing its understanding and approach to cultivating relationships with industry. For example, as the SEC chair noted in her testimony, CTC described [DELETED]. CTC Mission Suitability Proposal at 19-21; Tr. at 48-49, 232. Although NEMEP also indicated that it would use an information database system and web-based communication and networking systems to reach out to industry and that it had a network of MEP centers, NEMEP’s proposal description of what it was offering is more general than that of CTC. See NEMEP Mission Suitability proposal at 20-22. Furthermore, NEMEP does not dispute NASA’s concern that the implication in NEMEP’s proposal representation—that establishing relationships with the [DELETED] and the [DELETED] would be valuable in this regard—indicated a lack of understanding by NEMEP.

NASA also assessed as significant weaknesses in NEMEP’s proposal the firm’s failure to propose a high-level interface with the Goddard Space Flight Center, which NASA found indicated a lack of commitment on the part of NEMEP.¹⁰ Agency Report, Tab 45, Presentation Charts for the Northeast RTTC, at 29; Tab 50, First Debriefing to NEMEP, at 9. NEMEP proposed as its management approach to have its proposed director for the Northeast RTTC be the principal interface between

¹⁰ This problem constituted two of the significant weaknesses designated in NEMEP’s proposal.

NEMEP and the Goddard Space Flight Center.¹¹ NEMEP Mission Suitability Proposal at 57. However, NEMEP also proposed a full-time, on-site liaison at the Goddard Space Flight Center to serve as the “[DELETED]” to NASA. NEMEP Mission Suitability Proposal at 56-59. The evaluators had a number of problems with NEMEP’s proposal of a lower-level employee to serve as full-time liaison between NEMEP and NASA. See Tr. at 91-97. For example, the evaluators were concerned that NEMEP’s proposal to have this person be the [DELETED] was inefficient and would result in a “bottleneck.” Tr. at 96-97. In the evaluators’ view, the offer of a [DELETED], as CTC proposed, see CTC’s Mission Suitability Proposal at 60-63, was more appropriate and better demonstrated the firm’s commitment to the program.¹² Tr. at 101. While NEMEP disagrees with the agency’s judgment concerning the appropriate level at which the firm should interface with NASA, we have no basis to find that the agency’s concerns are unreasonable.

In sum, we find from our review of the SEC chair’s testimony (which was consistent with the contemporaneous evaluation record),¹³ the evaluation record, and the parties’ pleadings that NASA’s evaluation of the firms’ mission suitability proposals was reasonable and consistent with the RFP. In this regard, although we have primarily focused our review on the significant weaknesses identified by the protester as a means of testing the agency’s evaluation record, based on our review of the record, we find no basis to object to the other weaknesses assessed in NEMEP’s mission suitability proposal, and we do not find that NEMEP’s mission suitability rating was understated in any material way.

¹¹ NEMEP’s proposal actually stated that the director would be the principal interface between the firm and the Glenn Research Center in Ohio. NEMEP Mission Suitability Proposal at 57. NASA understood that this was a clerical error and that NEMEP meant that the director would be the interface with the Goddard Space Flight Center. Tr. at 90-91. However, the SEC noted this as demonstrating the lack of focus and sloppy approach of this section of the proposal. Agency Report, Tab 50, First Debriefing to NEMEP, at 9.

¹² CTC also proposed a high-level employee, its chief technical officer and one of its three partners, as a part-time liaison to NASA. CTC Mission Suitability Proposal at 39, 63-64. This person, unlike NEMEP’s dedicated lower-level liaison, performs other management tasks related to the performance of the RTTC contract.

¹³ Although NEMEP complains that the SEC chair did not have complete recall of the details surrounding the SEC’s evaluation and SSA’s briefing, see Protester’s Post-Hearing Comments at 3-5, the SEC’s chair’s testimony was consistent with the contemporaneous evaluation record and was sufficient to allow our review of the evaluation. Moreover, we do not find the chair’s lack of complete recall surprising considering that the evaluation board’s evaluation was conducted more than 6 months before the hearing.

NEMEP also objects to the point reduction in its mission suitability score due to NASA's determination in its reassessment of proposals that NEMEP's offer to provide two of its employees, a full-time, on-site liaison and a [DELETED], offered NASA no actual benefit.¹⁴ NASA states that it removed the costs associated with these two positions from NEMEP's evaluated probable costs because the agency concluded that these two positions offered no value to the agency. With respect to the on-site liaison, NASA concluded, as noted above, that this position actually hindered the ability of the offeror to efficiently perform the contract requirements; also the agency was concerned that NEMEP expected NASA to provide space for this person. See NEMEP Mission Suitability Proposal at 58. With respect to the [DELETED], NASA found that this position was superfluous because a full-time employee was not necessary to allow the contractor to satisfy the contractor's goal of [DELETED]. Although NEMEP disagrees with NASA's assessment, it does not show the determination that these two individuals offered NASA no actual benefits to be unreasonable.

NEMEP nevertheless contends that NASA treated it and CTC unequally because CTC also proposed an employee to serve as a liaison to the Goddard Space Flight Center yet NASA did not reduce CTC's probable costs to reflect the costs associated with this employee. Although it is true that both firms proposed employees to serve as liaisons with NASA, NEMEP's liaison to the Goddard Space Flight Center would be a full-time, on-site employee working in space provided by NASA. CTC, however, proposed that its chief technical officer would, in addition to other duties, serve on a part-time basis (an average of 2 days per week) as a liaison. In contrast to NEMEP's proposed [DELETED], CTC's proposed liaison was not proposed as [DELETED]. We see no basis in this record to conclude that NASA acted unreasonably in not reducing CTC's probable costs of performance for its chief technical officer.

NEMEP also challenges NASA's evaluation of the firms' past performance. As noted above, CTC's past performance was assessed as very good, and NEMEP's was assessed as good.

¹⁴ NEMEP argues that reducing its technical score is unreasonable because NEMEP proposed a fixed-price approach to performing the work and argues that a reduction in its mission suitability should not be based upon the difference between estimated and evaluated costs. This protest argument constitutes an untimely challenge to the terms of the RFP. 4 C.F.R. § 21.2(a)(1) (2000). The RFP, as amended, informed offerors that proposals submitted on an "other-than a cost reimbursement basis" would be subject to a cost realism analysis and that any reductions in the mission suitability score would be based upon the difference between the evaluated probable costs of performance and the proposed estimated costs. RFP amend No. 2, § L.5(3) at 4.

NEMEP complains that CTC's past performance should have been rated lower because CTC's performance of the [DELETED] received ratings of [DELETED] to [DELETED]. NASA responds that besides the incumbent contract, CTC presented other significant and relevant instances of past performance, which all received exceptional evaluation ratings. NASA thus concluded that a very good rating was warranted considering all of CTC's past performance. While NEMEP disagrees with this judgment, it does not show it to be unreasonable.

NEMEP also complains that its past performance rating should have been higher. NASA points out, however, that NEMEP's past performance did not include efforts that were comparable in size, scope and complexity to the RTTC contract. In addition, the majority of NEMEP's experience was under cooperative agreements and grants, and not contracts. We see no basis in this record to find that NASA's past performance evaluation was unreasonable.

The protester finally complains that NASA unfairly assigned NEMEP's fixed-price offer a moderate level of confidence rating as compared to the high level of confidence rating assigned CTC's cost reimbursable offer.¹⁵ NASA assigned only a moderate level of confidence rating to NEMEP's \$[DELETED] million fixed-price offer because NEMEP proposed \$[DELETED] million in estimated costs, which reflected a loss of nearly \$[DELETED]. NEMEP does not explain why the firm's proposal to perform at a loss, when coupled with the firm's evaluated weaknesses under the understanding the requirement subfactor, does not justify a moderate level of confidence rating. Moreover, unlike NEMEP's proposed price, CTC's offer was found to be realistic in that its proposed and probable costs closely tracked one another, justifying a high level of confidence. We do not agree with NEMEP that

¹⁵ NEMEP also complains that it was treated unequally in the DCAA investigations of the two firms' costs. Although it is true that DCAA's review of CTC's and NEMEP's cost proposals was different (that is, DCAA performed a rate review of CTC's proposal and a more complete audit of NEMEP's offer), NEMEP does not state what, if any, impact this difference had in NASA's assessment of the firms' proposals.

NASA should have assigned CTC's offer a lower confidence rating simply because CTC proposed a cost reimbursable contract, as contemplated by the RFP.¹⁶

The protest is denied.

Anthony H. Gamboa
Acting General Counsel

¹⁶ We anticipate addressing, in a separate decision, NEMEP's supplemental protest (B-285963.9), alleging that certain "clarifications" received from CTC actually constituted discussions.