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## Decision

**Matter of:** Space Systems/Loral LLC

**File:** B-413131

**Date:** August 22, 2016

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### DIGEST

1. Protest that agency failed to conduct meaningful discussions is denied where the agency led the offeror into the general area of its proposal requiring amplification or revision as acknowledged by the offeror in its final proposal revision.
  2. Protest challenging the agency's cost evaluation and source selection decision is denied where the record of its evaluation and selection decision were reasonable and consistent with the terms of the solicitation.
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### DECISION

Space Systems/Loral LLC (SSL) of Palo Alto, California, protests the award of a contract to Aerojet Rocketdyne, Inc. (Aerojet) of Redmond, Washington, under request for proposals (RFP) No. NNC15ZCH014R, issued by the National Aeronautics and Space Administration (NASA) for thruster and power processing unit development for an advanced electric propulsion system. SSL protests the agency's evaluation of its cost proposal, conduct of discussions, and source selection decision.

We deny the protest.

### BACKGROUND

This procurement is for the demonstration of an advanced solar electric propulsion system that will enable future deep space human and robotic exploration applicable

to the United States' private and public sector space needs. RFP<sup>1</sup> at 00248, 00250, 00370.<sup>2</sup> The purpose of the contract, referred to as the advanced electric propulsion system (AEPS) contract, is the development and delivery of electric propulsion<sup>3</sup> string sets<sup>4</sup> to support a solar electric propulsion demonstration mission. Id. at 00370. During the contract's base period of performance, the contractor will develop, test, and deliver engineering development end items that will reduce the risks associated with developing the flight end items. Id. During the option period of performance, if exercised, the contractor will develop, verify, and deliver the flight end items. Id.

The RFP, issued on July 24, 2015, under Federal Acquisition Regulation (FAR) part 15, contemplated the award of a cost-plus-fixed-fee contract with a performance fee incentive, with a base period and one option period, to be performed within a 36-month total period of performance.<sup>5</sup> Id. at 00248, 00320, 00336. Award was to be made on a best-value basis, considering the following evaluation factors: mission suitability,<sup>6</sup> past performance, and cost. Id. at 00326, 00352. The solicitation stated that all evaluation factors were equal in importance; and noted that the non-price factors, when combined, were significantly more important than cost. Id. at 00365.

In Section M, the RFP provided a very detailed description of the basis on which non-price factors would be evaluated under each subfactor. Id. at 00353-00360.

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<sup>1</sup> The RFP was amended one time. All citations to the RFP are to the final version, as amended on December 10, 2015.

<sup>2</sup> NASA used a Bates numbering system in preparing the agency report. This decision uses the Bates numbers assigned by the agency for its citations.

<sup>3</sup> An electric propulsion system uses electrical energy to expel propellant at high speed and thus propel the spacecraft using much less propellant than chemical rockets. Agency Report (AR), Contracting Officer Statement of Facts (COSF) at 1.

<sup>4</sup> An electric propulsion string is the integrated combination of the thruster, power processing unit (PPU), low-pressure xenon flow controller (XFC), and electrical harnesses. RFP, SOW, at 00371. The PPU controls the thruster output and operations, as well as, the XFC. Id., J.1 Final RFP Attachments, Final RFP Requirements, at 00500.

<sup>5</sup> The solicitation allowed offerors to determine the start and end dates for the base and option periods within the 36-month total contract period of performance. Id. at 00336.

<sup>6</sup> The mission suitability factor contained three subfactors (technical approach, project management, and small business utilization), each with several elements. See id. at 00353-00360.

As relevant here, the solicitation stated that under the mission suitability factor, technical approach subfactor, power processing unit (PPU) element (TA 1), the agency would evaluate the offeror's proposed PPU technical approach, including its design solution, development method, and justification that the design solution meets the requirements in the SOW.<sup>7</sup> Id. at 00353. This evaluation would include, as relevant here, the offeror's proposed PPU technical development approach; and would also consider details of the initial design reference point and the offeror's selection rationale of that reference design. Id. In this regard, offerors would choose to use the government's PPU electrical design or the offeror's own electrical design; if an offeror chose its own design, the design's level of maturity and heritage would be considered in the evaluation.<sup>8</sup> Id. The evaluation would also consider the offeror's identified technical risks for development, test, and delivery of the PPU and approach to mitigating these risks within cost and schedule (TA 1.6). Id. at 00354.

The solicitation advised that for the cost factor, a cost realism analysis would be conducted and that while no numerical scores or adjectival ratings would be assigned, the cost proposal was "important in determining that the [o]fferor understands the solicitation and the resources requirement." Id. at 00364. Offerors were required to provide pricing for six work areas, one of which, relevant here, was the PPU.<sup>9</sup> Id. at 00336. The solicitation also required an offeror to provide in its cost proposal a contractor basis of estimate (BOE) that addressed, among other things, "how you arrived at your estimate of labor hours, including: if your estimate was based on . . . a standard, in which case, identify the standard and explain if it is from . . . your company, or a product"; "[c]omplexity factors utilized – all factors must be defined; explain the rationale for their use and basis of the factor." Id. at 00349. The solicitation stated that the purpose of the BOE was to "give the [g]overnment

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<sup>7</sup> As explained by the agency, the numerous technical requirements of this procurement significantly exceed the requirements of existing state-of-the-art commercial systems. AR, COSF at 1. For example, the agency explains that the category of electric propulsion system sought in the RFP is a Hall thruster system, and the highest power system flown to date is 4.5 kW, while the system sought under the solicitation requires operation up to 13.33 kW. Id. The agency further explains that the difference in the power levels of the two systems is analogous to the difference between an electric clothes dryer for the former and an electric whole home heating and air conditioning unit for the latter. Id.

<sup>8</sup> As relevant here, the SOW stated that the agency developed a prototype 12.5 kW thruster and PPU that offerors could utilize as reference points. RFP, SOW, at 00370; see also id., attach. J.1(D) Request for Export Controlled Data, at 00564-00566; id., In-house Technology Non-Disclosure Agreement, at 00567-00570.

<sup>9</sup> The other five areas were project management, systems engineering and integration, safety mission assurance, thruster, and flow control. Id. at 00336.

insight into the thought processes and methodologies used by the [o]fferor in estimating the labor skill mix by labor hours . . . required for successful performance on this contract for the cost estimates. Emphasis should be placed on a description of the processes and methodologies themselves, and how these relate to the technical approach described in the proposal.” Id. at 00348-00349.

The agency received three timely proposals, including those submitted by SSL and Aerojet. A source evaluation board (SEB) was established to evaluate the proposals.

On November 19, 2015, the agency established a competitive range that included all three offerors. See AR, Tab 11a, Competitive Range Decision Memorandum at 01894. The competitive range determination noted that the agency’s evaluation of SSL’s initial proposal found that “the SSL cost proposal had more notable cost issues, in particular the proposal’s failure to finalize subcontracting costs of its major subcontractor [] and the proposed pricing of the PPU.” See id. at 01892. The agency also found that SSL essentially proposed a different contract type and that the firm took intellectual property limited rights exceptions to almost all of the PPU system--an exception to the terms of the solicitation--because SSL was proposing to accomplish this part of the requirement through SSL’s own internal research and development (IRAD).<sup>10</sup> Id. at 01893.

By letter of November 19, 2015, the agency informed SSL that its proposal was included in the competitive range. SSL was provided with “weaknesses, questions, and other relevant items identified by the evaluation team as needing further clarification,” and was invited to participate in face-to-face discussions with the agency. AR, Tab 14c, SSL Competitive Range Letter at 02125-02126. The agency

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<sup>10</sup> As relevant here, SSL’s proposal stated that it intended to fund the PPU development through its own IRAD, and therefore, excluded the cost of those tasks from its total proposed price “because the [g]overnment will not be paying for them.” See AR, Tab 9, SSL Initial Proposal, 9a3, SSL Cost Parts 1 & 2, at 00988-00990; see also id., 9a2, SSL Cost Part 4, at 00856, 00894-00909, 00953, 00955. SSL’s proposal also asserted limited data rights with regard to the PPU because it was being “[d]eveloped at [p]rivate [e]xpense during contract performance.” See id., 9a3, SSL Cost Parts 1 & 2, at 00990; id., 9b6, Vol. I, Mission Suitability, Terms and Conditions, at 01519. As a result, SSL’s cost proposal reflected that while it proposed a total of [DELETED] labor hours to complete the solicitation’s requirements for the PPU ([DELETED] hours for the base period and [DELETED] for the option period), it estimated an additional [DELETED] labor hours ([DELETED] for the base period and [DELETED] for the option period) of IRAD. See id., 9a2, SSL Cost Part 4, at 00856, 00858, 00894-00909, 00952-00955; id., 9a3, SSL Cost Parts 1 & 2, at 00990; AR, Tab 10, Initial Cost Evaluation of SSL, Initial Cost Summary, at 01573.

identified five cost discussion topics for SSL. Id. at 02128-02129. These topics identified issues with SSL's subcontractor, various math/formula errors in its cost proposal, and SSL's failure to "provide a cost proposal that reflects a [c]ost-[p]lus-[f]ixed-[f]ee contract type." Id. In addition to the cost discussion topics, SSL was provided with three administrative discussion topics, one of which pertained to SSL's limited data rights assertion, advising SSL that because this contract was a cost-plus-fixed-fee contract, "all allowable, allocable, and reasonable costs should be included as part of the total price of the effort" and that therefore, the government would "take rights to all technologies developed under its execution." Id. at 02127. SSL was also provided with weaknesses and significant weaknesses that had been identified under the mission suitability factor. Id. at 02127-02128; see also AR, Tab 14d, SSL Weakness Findings.

All face-to-face discussions, including those conducted with SSL on December 3, 2015, were structured to include a two-hour meeting to review the written discussions questions provided to the offerors, and address clarifications and questions the offerors had regarding the information; a two-hour break which allowed the offerors to caucus; and a one-hour session to complete discussions. AR, Tab 18, Final Presentation to Source Selection Authority (SSA) at 03503; see also AR, Tab 15, SEB Chair Notes for 12/10/15 Update to SSA re Discussions at 02160.<sup>11</sup> On December 10, 2015, final proposal revisions (FPR) were requested, with a due date of January 12, 2016. AR, Tab 14a, SSL FPR Instructions at 02120. All three offerors submitted timely FPRs.

In its FPR, SSL indicated that during the face-to-face discussions, "NASA disclosed that the most probable cost estimate for SSL was significantly higher than SSL's bid and SSL had not provided sufficient rationale for the [g]overnment to feel comfortable with our bid versus the independent cost estimate prepared by NASA."<sup>12</sup> AR, Tab 16, SSL FPR, 16a1, SSL Cost Parts 1 & 2, at 02179. SSL

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<sup>11</sup> The agency report contains no contemporaneous record of the face-to-face discussions; however, the SEB chairperson created notes when preparing an informal status update for the SSA shortly after the discussions occurred, documenting the SEB's perception of the effectiveness of the discussions. See AR, Tab 15, SEB Chair Notes for 12/10/15 Update to SSA re Discussions; AR, COSF at 10. These notes indicated that the agency and SSL did not go through all the findings set forth in the competitive range letter and its attachments, but rather, discussed the areas where SSL had questions. See AR, Tab 15, SEB Chair Notes for 12/10/15 Update to SSA re Discussions at 02164. The notes also indicated that a significant amount of time was spent discussing issues with SSL's cost proposal; however, the SEB noted that it remained concerned because it was "NOT CLEAR that [SSL] will adequately explain their BOE and why PPU cost is so low." Id.

<sup>12</sup> The agency did not disclose the magnitude of the adjustments made to SSL's initial proposal. However, the agency made significant adjustments to SSL's

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further stated it was providing its “[r]esponse to NASA’s [c]ompetitive [r]ange [d]etermination comments with respect to cost realism of SSL’s cost estimates.” Id. at 02188. SSL’s FPR additionally indicated that while it made “three significant cost changes,”<sup>13</sup> SSL made “[n]o changes in hours or non-labor estimates” in comparison with its initial proposal, other than to include all of the development tasks required to meet the SOW that were previously excluded from its proposal as IRAD. Id. at 02179. SSL also indicated that it was providing additional “rationale [as to] why SSL’s bid may not compare with [g]overnment cost models,” stating that “SSL has a significantly different cost structure than traditional contractors”; and positing that increasing SSL’s offer by a significant percentage would result in an unrealistically high probable cost.<sup>14</sup> Id. at 02179, 02189.

On March 14, 2016, the SEB provided its final evaluation report to the SSA, detailing the SEB’s findings in a presentation with briefing charts. See AR, Tab 18, Final Presentation to SSA; see also AR, Tab 19, Source Selection Statement (SSS) at 03702; AR, Tab 22, SEB Evaluation Plan at 03812-03813. The FPRs submitted by SSL and Aerojet were evaluated as follows:

	SSL	Aerojet
Mission Suitability (1000)	570	715

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proposed labor hours for the PPU by adding [DELETED] labor hours to account for SSL’s proposed IRAD, and then adding an additional 73,648 labor hours for the base and 15,616 labor hours for the option period. See Tab 10, Initial Cost Evaluation of SSL, Initial Cost Summary, at 01573. As a result, while SSL proposed \$[DELETED] for the PPU, the agency determined that its probable cost was \$[DELETED]. Id. at 01557. SSL’s total proposed cost was \$[DELETED] and its total probable cost was \$[DELETED]. Id.

<sup>13</sup> The other two changes were to reach an agreement with its subcontractor on a price for the subcontract and additional changes to implement the cost-reimbursement type contract. See AR, Tab 16, SSL FRP, 16a1, SSL Cost Parts 1 & 2, at 02179. As a result of the three changes, SSL’s total proposed cost, including the \$2 million performance incentive fee, increased from \$[DELETED] million to \$[DELETED] million. Id.

<sup>14</sup> The additional rationale that was provided in the FPR included data from other similar government contracts to show “the mix between [p]rogram [m]anagement (PM), [s]ystems [e]ngineering & [i]ntegration (SE&I), [s]afety and [m]ission [a]ssurance (SMA), and [h]ardware is very close to the mix on this bid” and that the “total hours bid for SSL’s content is reasonable when compared to completed programs”; and results of a study showing that SSL’s cost structure was lower than the cost model used to evaluate and forecast spacecraft costs within the government. Id. at 02179, 02188-02193.

Technical Approach (550)	360	420
Program Management (350)	155	225
Small Business Utilization (100)	55	75
Past Performance	Moderate Level of Confidence	High Level of Confidence
Proposed Cost <sup>15</sup>	\$29,520,916	\$65,037,821
Probable Cost	\$50,964,789	\$65,100,421

AR, Tab 18, Final Presentation to SSA at 03505, 03560, 03562.

The SSA concurred with the SEB’s findings; performed a comparative assessment of the proposals, identifying advantages and discriminators under each factor; and concluded that Aerojet’s proposal was technically superior to the other two proposals. In this regard, the SSA found that neither SSL’s nor the third offeror’s proposal offered any significant advantages that outweighed those of Aerojet’s proposal. See AR, Tab 19, SSS at 03703-03708.

With regard to the cost proposals, the SSA acknowledged that SSL’s probable cost was the lowest, but found that it presented “the most cost risk and uncertainty to the [g]overnment.” Id. at 03710. More specifically, the SSA found that the significant adjustments made to SSL’s proposed cost, after discussions, represented a “high degree of uncertainty in the cost adjustment and resulting probable cost.”<sup>16</sup> Id. at 03709. The SSA also discussed a number of concerns both the SEB and the SSA had with regard to SSL’s cost proposal. Id. Among those concerns was “the fact that SSL did not include a significant number of labor hours necessary to perform the work it proposed and/or did not, even after discussions were held,

<sup>15</sup> Neither the proposed cost nor the probable cost includes the \$2 million performance incentive fee.

<sup>16</sup> The agency’s total cost adjustment for the PPU was \$[DELETED]. See AR, Tab 18, Final Presentation to SSA at 03688. The agency’s rationale for the significant adjustment stated “SSL PPU hours are significantly low for the overall effort based on the technical evaluation. Labor hours adjustments are based on comparison with the labor hours in the [Independent Government Cost Estimate (IGCE)]. To be aligned with SSL[’s] development approach, the IGCE purchase of PPU subassemblies was integrated back and converted in to in-house labor ([DELETED] hours).” Id. As a result, the base period was increased by 69,288 hours and the option was increased by 63,716 hours because “[h]ours were not sufficient to complete the work SSL described in their proposal.” Id. Consequently, SSL’s proposed labor hours for the PPU were adjusted from [DELETED] to [DELETED] labor hours ([DELETED]); and while SSL’s total proposed cost for the PPU was \$[DELETED], the agency determined that its probable cost was \$[DELETED]. Id. at 03560, 03562, 03681.

substantiate why so few labor hours were sufficient to perform the work that SSL proposed.” Id. Further, the SSA considered “this lack of detail to constitute a lack of understanding of the work effort needed to successfully perform the requirements of the [c]ontract.” Id. Another expressed concern was “the fact that there is no evidence in SSL’s proposal that [made] either the SEB or [the SSA] confident that SSL has sufficient resources to support these increased labor hours if SSL were awarded the [c]ontract.” Id.

In selecting Aerojet, the SSA stated as follows:

I find that, given the technical complexity and aggressive schedule required for successful performance of the [c]ontract and the fact SSL offers no significant technical advantages over [Aerojet’s] proposal and provides the most cost and schedule risk to the [g]overnment, it is in the [g]overnment’s best interest to select a contractor with a technically superior proposal and a demonstrated relevant and highly successful contract performance. Accordingly, I find that [Aerojet’s] superiority over SSL in both the [m]ission [s]uitability and [r]elevant [p]ast [p]erformance factors outweighs the lower probable cost of the SSL’s proposal . . . .

In summary, I find that [Aerojet] has fully responded to the requirements of the RFP and has therefore displayed the potential to successfully perform the contract requirements at a lower overall risk and at the best value to the [g]overnment.

Id. at 03710.

On April 19, 2016, SSL was notified of the agency’s decision to award the contract to Aerojet. SSL was debriefed on May 4, 2016, and this protest followed.

## DISCUSSION

SSL challenges the agency’s conduct of discussions, the agency’s cost evaluation, and the best-value tradeoff decision. Although we do not specifically address all of SSL’s arguments, we have fully considered all of them and find that they afford no basis on which to sustain the protest.

### Discussions

SSL argues that the discussions that NASA held were misleading because the agency failed to communicate the true nature and magnitude of its concerns regarding SSL’s cost proposal. Protest at 14-16; Comments at 8-14; Supplemental (Supp.) Comments at 2-6. In this regard, the protester essentially argues that discussions were not meaningful because the agency failed to inform SSL of its

conclusion that SSL's hours were massively understated, separate and apart from two specific cost proposal issues<sup>17</sup> identified by the agency during discussions and resolved in SSL's FPR.

In response, the agency contends that its discussions with SSL were meaningful and sufficiently communicated all areas of concern that NASA had regarding SSL's initial proposal. See AR, COSF at 8-10; AR, Memorandum of Law (MOL) at 14-16; AR, Supp. MOL at 2-7. In this regard, the agency explains that because SSL's cost proposal and technical proposal presented numerous issues, the SEB had could not determine with confidence whether SSL had included appropriate pricing for all aspects of the contract, including for the PPU.<sup>18</sup> See AR, Supp. MOL at 3-11. The agency asserts that during discussions it "identified *in detail* the concerns that it had concerning SSL's approach to the PPU in its initial proposal." Id. at 7 (italics in original); see also AR, MOL at 14. These concerns included a significant weakness under evaluation element TA 1 (the PPU) reflecting SSL's inadequate discussion of its command, control, and telemetry approach, and a weakness under a sub-element (TA 1.6) for inadequate discussion of PPU technical risks.<sup>19</sup> In addition, NASA notes that it advised SSL that its cost proposal did not reflect a cost-plus-fixed-fee type contract and reminded SSL that under this specific contract type, "all allowable, allocable, and reasonable costs should be included as part of the total price of the effort"; and also advising SSL that its limited data rights assertions were inappropriate for this contract type.<sup>20</sup> See AR, Supp. MOL at 3-5; AR,

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<sup>17</sup> These issues are SSL's initially-proposed approach of absorbing significant amounts of PPU development costs that would be incurred under the contract as IRAD, and significant discounts that SSL proposed off of its major subcontractor's proposed cost. See Comments at 8-12.

<sup>18</sup> The cost adjustments made to the PPU area account for most of the agency's cost adjustments to SSL's proposal.

<sup>19</sup> The significant weakness and weakness both noted concerns that SSL's failure to address these issues would have cost and schedule impact. See AR, Tab 14d, SSL Weakness Findings at 02133 ("The SSL proposal's failure to adequately address the design approach of the PPU digital interface with the spacecraft results in an inability to assess how the PPU can meet the associated requirements, which **significantly increases the risk** of schedule delays and **increased costs**."), 02141 ("The SSL proposal's lack of inclusion and discussion of PPU technical risks and mitigations **will increase the risk** of schedule and **cost growth** during contract execution.") (emphasis added).

<sup>20</sup> SSL's proposal stated that because it intended to fund the PPU development through its own IRAD, thereby excluding the cost of the tasks that it proposed to be accomplished through IRAD from its total proposed price "because the [g]overnment will not be paying for them," it also asserted limited data rights with regard to the PPU because it was being "[d]eveloped at [p]rivate [e]xpense during  
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Tab 14c, SSL Competitive Range Letter at 02128; AR, Tab 14d, SSL Weakness Findings at 02133, 02141.

The agency also contends that during face-to-face discussions, SSL was made aware of the agency's concerns that SSL's proposal failed to substantiate its low proposed cost, in particular with respect to the labor hours required to develop the PPU. In this regard, the agency states that the SEB repeatedly summarized and re-emphasized that if SSL's "proposed cost, for the PPU in particular, was not significantly increased in the FPR, [SSL] needed to provide specific and clear rationale for the low cost in the [BOE] . . . and technical justification . . . in the [technical proposal] . . . of the FPR sufficient to convince NASA that the proposed point of departure<sup>21</sup> design and design approach would result in significantly reduced cost." AR, COSF at 10. The agency, further, contends that SSL's statement in its FPR that "NASA disclosed that the most probable cost estimate for SSL was **significantly higher** than SSL's bid and SSL had **not provided sufficient rationale** for the Government to feel comfortable with our bid versus the independent cost estimate prepared by NASA" confirms that during the face-to-face discussions, SSL was made aware of the agency's concerns. See AR, MOL at 14-16; AR, Supp. MOL at 8 n.8; AR, Tab 16, SSL FPR, 16a1, SSL Cost Parts 1 & 2, at 02179, 02188 (emphasis added). As further support, the agency points out that SSL's FPR indicated that it was providing "[r]esponse to NASA's [c]ompetitive [r]ange [d]etermination comments with regard to **cost realism of SSL's cost estimates.**" See AR, MOL at 15; AR, Tab 16, SSL FPR, 16a1, SSL Cost Parts 1 & 2, at 02188 (emphasis added).

Agencies have broad discretion to determine the content and extent of discussions, and we limit our review of the agency's judgments in this area to a determination of whether they are reasonable. InfoPro, Inc., B-408642.2, B-408642.3, Dec. 23, 2014, 2015 CPD ¶ 59 at 9. When an agency engages in discussions with an offeror, the discussions must be meaningful, that is, sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision in a manner to materially enhance the offeror's potential for receiving the award. FAR § 15.306(d); Cubic Simulation Sys., Inc., B-410006, B-410006.2, Oct. 8, 2014, 2014 CPD ¶ 299 at 12. The requirement that discussions be meaningful, however, does not obligate an agency to spoon-feed an offeror or to discuss every area

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contract performance." See AR, Tab 9, SSL Initial Proposal, 9a3, SSL Cost Parts 1 & 2, at 00988-00990; id., 9b6, Vol. I, Mission Suitability, Terms and Conditions, at 01519.

<sup>21</sup> While the term "point of departure" (POD) is not specifically defined in the record, we understand it to refer to the initial design reference point selected by the offeror. Compare RFP at 00353 with AR, Tab 18, Final Presentation to SSA at 03609.

where the proposal could be improved. FAR § 15.306(d)(3); Insignia-Spectrum, LLC, B-406963.2, Sept. 19, 2012, 2012 CPD ¶ 304 at 5. The degree of specificity required in conducting discussions is not constant and is primarily a matter for the procuring agency to determine. Kathpal Techs., Inc., B-291637.2, Apr. 10, 2003, 2003 CPD ¶ 69 at 3.

Here, the record indicates the agency led SSL into the areas of its proposal requiring amplification or revision during discussions. While there is no contemporaneous record of the face-to-face discussions, the SEB chairperson documented the SEB's perception of the effectiveness of discussions shortly after they occurred. That documentation indicated, as relevant here, that despite having spent a significant amount of time discussing issues that had been identified with SSL's cost proposal and contract type, the SEB remained concerned that it was "NOT CLEAR that [SSL] will adequately explain their BOE and why PPU cost is so low." See AR, Tab 15, SEB Chair Notes for 12/10/15 Update to SSA re Discussions at 02164. Further, SSL's own admission in its FPR, as shown above, confirms that it was made aware during discussions that significant cost adjustments were made to its proposal and that the agency did not find that SSL provided sufficient justification for its low proposed cost and the "cost realism of SSL's cost estimates." See AR, Tab 16, SSL FPR, 16a1, SSL Cost Parts 1 & 2, at 02179. On this record, we conclude that the agency reasonably informed SSL that it considered SSL's low PPU cost not to have been sufficiently explained, and thereby adequately led SSL into the area of its proposal requiring revision. Accordingly, we deny SSL's protest that discussions were misleading and not meaningful.

### Cost Evaluation

The protester also challenges several aspects of the agency's cost realism analysis. Protest at 12-14, Comments at 4-8, 15-21. In this regard, the protester contends that the IGCE--which was the "root of all [the] defects" it has identified in its protest--was flawed because it "did not account for efficiencies in the commercial marketplace, but rather was geared towards government projects." See Protest at 14; Comments at 2.

In response, the agency explains that the IGCE was developed using a widely-accepted parametric cost-estimating approach specifically built for this procurement. AR, MOL at 12; see also AR, COSF at 1-4. This approach used data and input from a credentialed cross-discipline team of NASA technical and cost estimating subject-matter experts, who not only were the lead experts in their respective fields but also led NASA's fabrication and testing of the prototype system in preparation for this unique, challenging, and complex research-and-development procurement. Id. The agency also contends that the protest does not specifically demonstrate any specific flaw in the IGCE, other than to complain that it was based "solely on government projects that were materially dissimilar to SSL's historical commercial work." Compare Protest at 14 with AR, MOL at 12. However, the agency's

obligation in this respect is to ensure that its IGCE is reasonable--not that it includes work similar to SSL's commercial work. Finally, the agency contends that the procurement is "NASA's project, not SSL's, and, as such, the requirements of AEPS are for NASA to determine." AR, MOL at 13. We agree.

The determination of a contracting agency's needs and the best method of accommodating them are matters primarily within the agency's discretion. See, e.g., APlus Techs., Inc., B-408551.3, Dec. 23, 2013, 2014 CPD ¶ 12 at 6. Where, as here, our Office reviews a challenge to government estimates for reasonableness, a protester's disagreement with an agency's basis for developing a government estimate, by itself, provides no basis to sustain a protest. Balt. Gas & Elec. Co., B-406057 et al., Feb. 1, 2012, 2012 CPD ¶ 34 at 6; NCI Info. Sys., Inc., B-405589, Nov. 23, 2011, 2011 CPD ¶ 269 at 4. We conclude that the protester's argument that the agency's IGCE was flawed because it failed to account for efficiencies in the commercial marketplace, amounts to no more than disagreement with the agency's judgment in developing its IGCE. Accordingly, SSL's challenges to the IGCE are denied.

SSL also argues that the agency failed to perform and document a meaningful cost realism analysis because the agency mechanically applied the IGCE in evaluating the sufficiency of the offeror's proposed costs, and failed to take into consideration SSL's unique efficiencies and technical approach that would have provided explanations for the differences between the IGCE and its proposed costs. Protest at 12-14; Comments at 15-21.

In response, the agency explains that it considered the various aspects of SSL's proposal that the protester claims would have explained the differences between the IGCE and its proposed costs. However, while it credited the proposal for certain efficiencies where appropriate, it found that SSL's proposal was insufficiently supported and failed to account for the unique and complex requirements of the procurement. See AR, MOL at 5-9; AR, COSF at 12-20.

In this regard, NASA states that it found numerous problems with SSL's cost estimating approach, which derived labor hours based on "actuals" from its commercial systems, multiplied by complexity factors assigned by SSL.<sup>22</sup> The

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<sup>22</sup> SSL's BOE showed that the labor hours proposed by SSL to accomplish the requirements of the solicitation were derived by multiplying "baseline hours per unit" by a "complexity factor" for a given task. See e.g., AR, Tab 9, SSL Initial Proposal, 9a2, SSL Cost Part 4, at 00856, 00858, 00894-00909, 00952-00955; AR, Tab 16, SSL FPR, 16a3, SSL Cost Part 4, at 02533-02547, 02599-02601. The BOE also indicated that for a large number of its proposed labor hours, the basis of this estimate was "similarity with complexity factors," referencing its commercial systems "actuals". Id.

agency explains, at length, that the system sought under this procurement “must satisfy the NASA RFP’s unique requirements, which are much, much more challenging than those of the commercial systems [] that SSL proposed leveraging in its proposal.” See AR, COSF at 12-20. As such, the agency found SSL’s reliance on the “actual” costs it incurred in developing some commercial systems that have been in production for nearly two decades as a basis for its cost estimating approach not to be credible. Id. See also AR, MOL at 5-7. Similarly, the agency found that SSL’s assignment of complexity factors at 1.0 or lower--meaning that those tasks would require the same resources or less as a comparable part of SSL’s commercial system--for a majority of the tasks in SSL’s cost proposal resulted in cost estimates that were not justified and were understated.<sup>23</sup> AR, COSF at 13.

The agency further explains that the SEB was unable to estimate appropriate upward adjustments to SSL’s proposed PPU labor hours based on information presented in SSL’s proposal. See AR, COSF at 13-14; AR, MOL at 6. In this regard, the agency states that because SSL provided inadequate and conflicting information regarding its proposed PPU approach in its technical proposal--for which SSL was assigned a weakness in its FPR under TA 1.6--NASA was unable to appropriately adjust the complexity factors. See id. As a result, the SEB utilized the PPU labor hours assumed in the IGCE “as a baseline” to “fill in gaps where insufficient information was provided by SSL for justifying the significant difference in PPU labor hours.” Id.

When an agency evaluates a proposal for the award of a cost-reimbursement contract, an offeror’s costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. FAR § 15.305(a)(1); Bart & Assocs., Inc., B-407996.5 et al., Jan. 5, 2015, 2015 CPD ¶ 61 at 12; Wyle Labs., Inc., B-407784, Feb. 19, 2013, 2013 CPD ¶ 63 at 8. An agency must perform a cost-realism analysis 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. Noridian Admin. Servs., LLC, B-401068.13, Jan. 16, 2013, 2013 CPD ¶ 52 at 4. Based on the results of the cost realism analysis, an offeror’s proposed costs should be adjusted when appropriate. FAR § 15.404-1(d)(2)(ii). An agency’s cost realism analysis need not achieve scientific certainty; rather, the methodology employed must be reasonably adequate and provide some measure of confidence that the proposed costs are reasonable and realistic in view of other

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<sup>23</sup> In this regard, the agency contends SSL’s proposal did not provide sufficient insight into the commercial systems proposed by SSL to “estimate appropriate complexity factors,” but roughly estimated that the complexity factors for most of the PPU-related elements “should have been in the range of 3 to 5 with some as high as 10.” AR, COSF at 13.

cost information reasonably available to the agency as of the time of its evaluation. See SGT, Inc., B-294722.4, July 28, 2005, 2005 CPD ¶ 151 at 7. An agency's cost realism analysis requires the exercise of informed judgment, and we review an agency's judgment in this area only to see that the cost realism analysis was reasonably based and not arbitrary. Info. Ventures, Inc., B-297276.2 et al., Mar. 1, 2006, 2006 CPD ¶ 45 at 7.

On this record, we do not find the agency's cost realism unreasonable. As explained by the agency, its evaluation did not mechanically or arbitrarily adjust SSL's proposed cost to "match the IGCE." See AR, MOL at 6. Rather, after finding that SSL's proposed costs for the PPU were neither technically credible nor sufficiently supported, the agency relied on the IGCE as a baseline to develop upward adjustments to SSL's PPU costs. NASA explains that it did so because SSL's proposal provided inadequate and conflicting information that would not enable the agency to calculate appropriate adjustments based on SSL's proposed technical approach. Id. at 6-7; AR, COSF at 13-19. An offeror has the burden of submitting an adequately written proposal and runs the risk that its proposal will be evaluated unfavorably where it fails to do so. Noridian Admin. Servs., LLC, supra, at 5. Accordingly, SSL's protest challenging the agency's cost evaluation is denied.

#### Source Selection Decision

Finally, SSL argues that the best-value tradeoff decision was flawed because it relied on a flawed evaluation. Protest at 16.

Source selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will make use of the technical and price evaluation results; price/technical trade-offs may be made, and the extent to which one may be sacrificed for the other is governed only by the test of rationality and consistency with the solicitation's evaluation criteria. Halfaker and Assocs., LLC, B-407919, B-407919.2, Apr. 10, 2013, 2013 CPD ¶ 98 at 12.

As described above, the record does not support SSL's challenges to the agency's cost evaluation. Accordingly, we find no merit to SSL's objections to the agency's selection decision, which are based upon those alleged errors. SSL raised a number of additional challenges in its comments on the agency report, arguing that the SSA failed to perform and document a rational explanation for selecting a higher-rated, higher-cost proposal. See Comments at 21-23. SSL was provided the source selection statement with its debriefing, which it included in its initial protest. See Protest, exh. C, Source Selection Statement. Since this document, which was in the protester's possession before it filed its protest, provided the information on which SSL bases this protest argument, these arguments are untimely when first raised in SSL's comments filing. 4 C.F.R. § 21.2(a)(2).

The protest is denied.

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