

REDACTED VERSION

Agency's best value determination is defective and inconsistent with the RFP's evaluation criteria. In addition, Plaintiff requests preliminary¹ and permanent injunctive relief prohibiting the Agency from proceeding with the 15 contracts awarded and requiring the Agency to implement corrective measures to address the violations of law and regulations identified herein.

SUMMARY

3. This case presents unusual circumstances whereby the Agency's initial technical evaluation panel (referred to as the Technical Evaluation Board or "TEB") assessed Novetta as among the highest rated proposals, such that it had a substantial chance of obtaining one of the 15 contracts awarded by DISA. But a separate panel (the Source Selection Evaluation Board or "SSEB") – a panel that did not even review the actual proposals – rejected three of Novetta's strengths assigned by the TEB under the RFP's most important evaluation factor, resulting in its technical rating being lowered from Good to Acceptable. Novetta and three other disappointed offerors protested the Agency's award decisions before the U.S. Government Accountability Office ("GAO"), and all of the protests were sustained in part in October 2018.

4. In its reevaluation, the Agency focused only on whether one of Novetta's originally assigned strengths should have been reinstated and applied the same circular logic that the GAO previously found to be unreasonable. Moreover, the standard that the Agency applied to assess whether that aspect of Novetta's proposal merited a strength was plainly inconsistent with the RFP terms and inconsistent with the approach used to assign strengths to the awardees. Further, in focusing on that one strength, the Agency overlooked that corrective actions it had taken on one of the other successful protesters' evaluation (Solers, Inc.) should have been

¹ On March 1, 2019, counsel for Plaintiff and Defendant conferred and reached agreement on an approach regarding performance under the awarded contracts that should obviate the need for Plaintiff to seek temporary or preliminary injunctive relief at this time.

applied to Novetta's evaluation as well. In particular, the SSEB had consolidated two of Novetta's TEB-assigned strengths under different aspects of the same evaluation criterion, but the GAO decided in Solers' protest that two strengths were appropriate under that same factor. The facts underlying those two issues developed after the GAO's October 2018 decision on Novetta's protest, and so the GAO did not have occasion to consider them. Nevertheless, the GAO previously found that any additional strength assigned to Novetta under the RFP's most important factor could have reasonably impacted the award decision to the prejudice of Novetta.

5. In addition, Novetta's GAO protest identified numerous instances of unreasonably disparate treatment in DISA's evaluations. The GAO agreed that some of those instances were unexplained in the record, but the GAO improperly permitted the Agency to make post hoc arguments outside the evaluation record to identify distinctions in the awardees' proposals as compared to Novetta's proposal. Moreover, those distinctions relied upon by the GAO were superficial and inconsistent with the evaluation record – which made clear that strengths were assigned to the awardees based on proposal content and approaches that were substantially similar to Novetta's proposal. Disparate evaluation treatment tainted this award decision in a manner that cannot be condoned by the Court.

6. Further still, DISA has inexplicably refused to engage in discussions and permit proposal revisions from offerors despite its obligations under DFARS 215.306(c), which make discussions the “default procedure” under procurements in excess of \$100 million. This procurement is valued at \$7.5 billion, and there is no valid basis for the Agency avoiding discussions here. In fact, making awards based on proposals that are now nearly two years old is fundamentally inconsistent with the purpose of these contract vehicles, which is to acquire “*emerging*,” “*critical*,” and “*innovative*” technologies.

7. Accordingly, and for the reasons further detailed below, Novetta requests injunctive relief prohibiting the Agency from proceeding with the 15 contracts awarded and requiring the Agency to implement corrective measures to address the violations of law and regulations identified herein.

JURISDICTION

8. This Court has jurisdiction over the subject matter of this Complaint pursuant to the Tucker Act, 28 U.S.C. § 1491(b)(1), because Novetta is an interested party that submitted a proposal in response to the RFP and is alleging violations of law and regulation.

THE PARTIES

9. Plaintiff, Novetta, is a corporation organized and doing business under the laws of the State of Maryland with its principal place of business at 7921 Jones Branch Drive, McLean, VA 22102. Novetta is an advanced analytics company with industry-leading experience supporting innovative and high-end Federal cyber operations. Novetta has supported DISA, as well as other DISA partners throughout the Department of Defense (“DoD”) and the intelligence community, for more than 20 years, by achieving real world success in big data and information technology engineering support services through development, deployment, and fielding of the world’s most advanced and innovative solutions.

10. Defendant, the United States of America, for all purposes relevant hereto, acted by and through the Defense Information Systems Agency.

FACTUAL BACKGROUND

A. The DISA SETI Program

11. The Agency issued the RFP on February 22, 2017. *See* Ex. A, RFP, p. 1. The RFP explains that DISA “serves as DoD’s combat support Agency responsible for delivering,

operating, and assuring a critical array of technical capabilities and enterprise systems and services to the Warfighter, among which include command and control (C2), information sharing, and global net-centric enterprise information infrastructure.” *Id.* at 11. “DISA’s primary vision is to establish information dominance for our DoD and mission partners in order to secure and defend the nation.” *Id.*

12. The objective of the DISA SETI contract “is to provide quality engineering and technical support, services, and products globally.” *Id.* at 12. More specifically, “SETI promotes the delivery of innovative systems and capabilities using mature and emerging technologies and standards in order to achieve and improve towards a collaborative, adaptive, secure, expeditious, and interoperable enterprise information environment.” *Id.*

13. The SETI contract is structured in a manner that will provide a “streamlined process for ordering a wide variety of critical IT engineering performance-based services while ensuring consistency and maximum opportunity for competition.” *Id.* The contract vehicle will be available for ordering by agencies throughout the DoD.

14. The scope of the SETI contracts includes a range of research and development as well as “critical technical disciplines core to engineering, delivering, and maintaining” DISA information technology products and capabilities. *Id.* It also encompasses legacy, current, and future capabilities spanning the entire spectrum of DISA mission areas. In particular, the Performance Work Statement (“PWS”) included the following eight task areas: (1) System Engineering; (2) Design Analysis Engineering; (3) Systems Architecture; (4) Software Systems Design and Development; (5) Systems Integration; (6) Systems Test and Evaluation; (7) Systems Development and Life-cycle Engineering; and (8) Special Systems Engineering Requirements. *See id.* at 12-13.

B. The RFP Requirements and Instructions

15. The RFP anticipated two suites of contracts: an unrestricted pool (in which the Agency intended to award approximately ten contracts), and a restricted pool for small business (in which the Agency intended to award approximately twenty contracts). *See* Ex. B, RFP Am. 4, p. 30. The total contract pooled capacity was \$7.5 billion, and the duration of the base contract was five years, with one five-year option available. *See id.* The Solicitation further explained that individual task orders may be firm-fixed price, cost-reimbursable, time and material (“T&M”), or a combination of these, and may also include incentives. *See id.*

16. Offerors were instructed to submit proposals in four volumes:

- Volume I – Contract Documentation, including Executive Summary and Company Information;
- Volume II – Technical Proposal, which contains five tabs: Task Area Chart/Experience, Partnership Joint Venture or Teaming Agreements, Factor 1 – Innovation, Factor 2 – Past Performance, and Factor 3 – Problem Statements;
- Volume III – Factor 4 – Small Business Proposal; and
- Volume IV – Factor 5 – Cost/Price Proposal.

See id. at 33-34.

17. The Solicitation contained exhaustive instructions regarding “Tab C” of Volume II, which would be devoted to Factor 1, Innovation, and are particularly relevant to this protest.

Specifically, the RFP explained how “innovation” would be defined by DISA:

Definition of Innovation as it relates to the evaluation of this factor:

To DISA, and the DoD, fostering a creative culture and driving Innovation in defense of the country, are paramount success criteria in executing the SETI Contract. In the SETI procurement, the Government is looking for innovative companies that accelerate attainment of new information system capabilities. In this context and for the evaluation of this factor, “innovative” means –

- (1) any new technology, process, or method, including research and development; or
- (2) any new application of an existing technology, process, or method.

Ex. B, RFP Am. 4, p. 39.

18. The RFP then explained that an offeror's approach to innovation should be based on DISA's Operating Principles and specified 21 "current" mission needs where innovation may be capable. The RFP instructed offerors to organize Tab C of their proposals into five elements involving the offeror's "corporate philosophy/culture" (§ L.4.2.3.1), "investment in innovation" (§ L.4.2.3.2), "history of engineering and deploying innovative solutions" (§ L.4.2.3.3), "outreach and participation" (§ L.4.2.3.4), and certifications/awards/patents (§ L.4.2.3.5). Each of those "Elements" included three to seven bullet points of further detail on what would be evaluated under the Innovation factor. *See id.* at 40-42.

19. Also within Volume II, for the Past Performance Factor, offerors were instructed to submit up to three past performance references, and the Agency expressed a desire that the references include examples of deployed innovative technologies. *See id.* at 42-43.

20. For Factor 3, the Problem Statement Narratives, the Solicitation explained that the Agency intends to use offerors' responses as the basis for technical proposals for future task orders. *See id.* at 44. The notional problem statements were intended to provide the Agency with insight into each offeror's ability to meet DISA requirements in diverse technical areas, as well as offerors' approaches to problem solving. Offerors were thus instructed to provide a detailed approach/plan to each of two problem statements, including a "discussion on the potential high-risk features of the work that may adversely impact the completion date and the Offeror's plan to mitigate these risks." *Id.* at 45. Offerors proposing in the unrestricted pool, like Novetta, were to include responses to Problem Statements 1 and 2; whereas, small business offerors were directed to respond to Problem Statements 3 and 4.

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21. In Volume III, with respect to Small Business Participation and Commitment Plan (Factor 4), offerors were instructed to articulate how U.S. small businesses will participate in the performance of the contract. *See id.* at 46.

22. Within Volume IV, the Cost/Price Proposal, offerors were directed to simply input *maximum* labor rates on a government-provided spreadsheet for a designated set of labor categories. *See id.* at 48. Those labor rates were multiplied by a plug number of hours to calculate each offeror's total evaluated price. Offerors were instructed that they may propose lower rates on actual task orders during performance of the SETI contracts. *Id.* Prices were to be evaluated for reasonableness, completeness, and balance. *See id.* at 49.

C. Evaluation Criteria

23. The Agency was to award contracts to offerors whose proposals “present the greatest understanding of the requirements and will best meet, or exceed, the requirements.” Ex. B, RFP Am. 4, p. 50. This evaluation would “be based upon an integrated assessment of the evaluation factors.” *See id.* The RFP listed the non-price factors in descending order of importance and stated that all non-price factors, when combined, “are significantly more important” than price. *Id.* at 51. The RFP included the following detailed evaluation criteria for the non-price factors.

24. For Factor 1, Innovation, the Agency would use a color/adjective risk rating table, and assess the offerors through consideration of strengths, weaknesses, significant weaknesses, uncertainties, and deficiencies. *See id.* at 51-52. Significantly, RFP § M.2.2.2 expressly described how proposals would be differentiated under the Innovation factor:

Offerors may be *evaluated more favorably and achieve higher ratings* for the following:

- Demonstrated long term corporate philosophy regarding Innovation. Mature definition of Innovation.
- Demonstrated continuous investment in Innovation through evidence of sustained, year-after-year investment in technologies and innovative ways to develop new capability, improve service, reduce costs and create efficiencies.
- Validated processes and procedures that demonstrate useful metrics and achieved results based on innovative processes.
- Demonstrated evidence of ongoing corporate investment in tools, training, facilities, personnel and equipment.
- Demonstrated development of prototypes and solutions to mitigate issues and risk relevant to the SETI PWS.
- Extensive publications on the topic of Innovation, including books and white papers.

Id., p. 52 (emphasis added).

25. The RFP's description of this evaluation approach was important because the Innovation factor is focused upon the offeror's organizational history, culture, investments, past experiences, and past achievements – as opposed to exceeding any specified performance capabilities. In fact, RFP § M.1.1.1 emphasizes that “**offerors are to propose to the evaluation factors included in this section ONLY and NOT required to propose to the entire PWS.**” *Id.*, p. 50 (emphasis in original). This is understandable considering that the SETI contracts are merely vehicles for the DoD to procure critical, undefined technology requirements that arise in the future.

26. For Factor 2, Past Performance, the Agency was to evaluate the “degree of confidence the Government has in an Offeror's ability to supply solutions and services that meet users' needs, based on a demonstrated record of performance.” *Id.* References would be evaluated for their recency and relevancy, with overall past performance confidence assessment ratings ranging from “Substantial Confidence” to “No Confidence.” *See id.* at 52-54.

27. For Factor 3, Problem Statements, the Agency was to evaluate proposals using a “combined technical/management rating and risk rating” that includes “consideration of risk in conjunction with the strengths, weaknesses, and deficiencies in determining technical ratings.” *Id.* at 54. The RFP explained that the Agency would assign individual ratings for each of the two problem statements within Factor 3, and that they would be of equal importance. *See id.* at 55. Specifically, the RFP stated that “[t]he Government will assess the Offerors’ submissions to this factor for comprehension of problem, solution to problem, realism of solution and realistic schedule. To be acceptable, the Offeror’s submission shall demonstrate in depth understanding of the problem and a comprehensive solution that is realistic and achievable in a reasonable timeframe.” *Id.* at 55 (Problem Statements 1 and 3) and at 56 (Problem Statements 2 and 4).

28. As the RFP did for the Innovation factor, the RFP specified aspects of the problem statement responses that would be “evaluated more favorably” and result in higher ratings, such as “[p]roposing a realistic innovative solution,” “[p]roposing a solution that is compatible with existing and emerging standards,” and “[p]roposing a solution that includes a quantitative basis in the approach and its benefit,” *etc.* *Id.*, §§ M.2.4.2 and M.2.4.3, pp. 55-56.

29. For Factor 4, Utilization of Small Business, the Agency was to “consider each Offeror’s commitment to use small businesses in terms of the type of work to be performed, the extent to which specific companies are named in the proposal and whether documented commitments are demonstrated in their proposal.” *Id.* at 56. Additionally, “Offers will also be evaluated to assess the number and expected benefits of proposed new, [c]ontract specific small business initiatives and the extent to which Offerors have in place effective procedures to ensure proper flow-down of requirements, process management, and performance assessments of small business utilization at lower tiers.” *Id.*

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30. For Factor 5, Price/Cost, the Agency was to evaluate the total proposed price which was to be used for trade-offs between the price and non-price factors. *See id.* at 57. The total proposed price would be calculated based on the offerors' fully burdened maximum rates for each labor category, although the labor category and "designated number of hours for each labor category" were already delineated in Attachment 9 to the Solicitation. *See id.* Importantly, those total evaluated prices only reflected the maximum labor rates that could be used in fixed price or T&M task orders, and offerors would be permitted to propose lower rates in those task order competitions during performance of the SETI contracts.

D. Proposal Submission and Original Contract Awards

31. Novetta submitted its initial proposal – and the only proposal permitted to date – on April 4, 2017, with a total proposed price of \$291,803,529.

32. Over a year later, on June 14, 2018, the Agency notified Novetta via e-mail that it had not received an award, and that DISA had awarded contracts to 14 offerors, with 21 other offerors (including Novetta) not receiving any award. The prices for the awardees ranged from \$123.2 million to \$269.6 million.

33. On June 15, 2018, Novetta received a written debriefing from the Agency, which included an extract from the SSEB's evaluation report. The SSEB Extract revealed that Novetta initially received strong ratings from the TEB:

Offeror Name	Factor 1	Factor 2	Factor 3		Factor 4	Factor 5
	Innovation	Past Performance	Problem Statement 1	Problem Statement 2	Small Business	Price
Novetta, Inc	Good					\$291,803,529
		Substantial Confidence	Acceptable	Acceptable	Good	

Ex. C, SSEB Extract at 141.

34. In fact, Novetta’s adjectival ratings assigned by the TEB were identical to two other awardees, and very similar to several others. Notably, the TEB’s assignment of a Good rating to Novetta under the Innovation factor was based on the assignment of four strengths.

35. The SSEB Extract further revealed, however, that the SSEB reviewed the reports prepared by the TEB (as opposed to reviewing the actual proposals), and made critical changes that lowered Novetta’s rating in the single most important factor, Innovation.

36. More specifically, the first strength the TEB had assigned Novetta under Factor 1 was in Element 1, “Corporate Philosophy/Culture on Innovation” (RFP § L.4.2.3.1) and related to the second bullet point in that RFP section, which had asked offerors to “[d]escribe how the company’s core competency of Innovation significantly aligns with DISA’s mission needs and requirements.” Ex. B, RFP Am 4, p. 40. In this regard, Novetta’s proposal had [REDACTED]

[REDACTED]

[REDACTED]

37. The TEB recognized this as a strength because Novetta’s “innovative projects” were “similar to the acquisition structure and complex problem domains of SETI” and because Novetta’s “demonstration of experience [REDACTED] DISA mission areas increases the probability of success on future SETI task performance.” Ex. C, p. 141.

38. The TEB’s conclusions were consistent with the evaluation criteria in RFP § M.2.2.2 that had specified offerors would be “evaluated more favorably” under Factor 1 and achieve higher ratings if they “demonstrate[d] continuous investment in Innovation through evidence of sustained, year-after-year investment in technologies and innovative ways to develop new capability, improve service, reduce costs and create efficiencies” and had “[v]alidated

processes and procedures that demonstrate useful metrics and achieved results based on innovative processes.” Ex. B, RFP Am 4, p. 52.

39. Nevertheless, Novetta’s debriefing reflected that the SSEB removed this strength. The SSEB’s entire – and utterly insufficient – explanation was that: “The SSEB did not agree that this was an aspect of the Offeror’s proposal that had merit or exceeded specified performance or capability requirements in a way that will be advantageous to the Government during contract performance.” Ex. C, SSEB Extract, p. 142.

40. The second and third strengths the TEB had assigned to Novetta’s proposal under Factor 1 were both in Element 3 “History of Engineering and Deploying Innovative Solutions” (RFP § L.4.2.3.3) and related to the first and second bullet points thereunder, respectively. The TEB described these strengths as follows:

The Offeror provides a detailed description of [REDACTED]
[REDACTED]
[REDACTED]. This benefits the Government by demonstrating innovation that [REDACTED]
[REDACTED].

* * *

[REDACTED] The Offeror provides [REDACTED]
[REDACTED]. This benefits the Government by demonstrating the ability to innovate [REDACTED]
[REDACTED].

Ex. C, SSEB Extract, p. 141.

41. Again, the TEB’s assignment of these two strengths was consistent with the RFP’s evaluation criteria requiring that DISA reward proposals that “[d]emonstrated

development of prototypes and solutions to mitigate issues and risk relevant to the SETI PWS” and which demonstrated “continuous investment in Innovation,” “[v]alidated processes and procedures,” and “innovative ways to develop new capability.” Ex. B, RFP Am. 4, p. 52.

42. The SSEB, however, determined that the two separate strengths should be combined into a single strength:

Combined strengths #2 and #3. The SSEB determined that these should be a single strength. Both cite examples of Novetta’s history of engineering and deploying innovative solutions; however, they are not significantly different enough to warrant two separate strengths.

Ex. C, SSEB Extract, p. 142.

43. The fourth strength assigned by the TEB under Factor 1 was in Element 4 “Outreach and Participation” (RFP § L.4.2.3.4) and related to the third bullet point thereunder, considering “[p]articipation and contributions within various standards making bodies.” In particular, the TEB assigned a strength to Novetta for its demonstrated role in [REDACTED]

[REDACTED]:

[REDACTED] The Offerors response demonstrates their significant technical roles in [REDACTED]

[REDACTED]

Ex. C, SSEB Extract, p. 141.

44. Again, the TEB’s assignment of this strength was consistent with the evaluation criteria in RFP § M.2.2.2, which included evaluating offerors more favorably where they have

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“[d]emonstrated evidence of ongoing corporate investment in tools, training, facilities, personnel and equipment,” and the TEB had specifically found that it would raise the probability of successful contract performance.

45. However, the SSEB removed that strength based on its “feeling”:

Removed strength #4. The SSEB did not feel that the Offeror’s response regarding their significant technical role [REDACTED] was an aspect of the proposal that had merit or exceeded specified performance or capability requirements.

Ex. C, SSEB Extract, p. 142.

46. In summary, while the TEB found that Novetta merited four distinct strengths under the most important factor utilizing the RFP’s instructions and evaluation criteria, the SSEB, with scant explanation, eliminated two of the strengths, and found that the remaining two should be combined. *See id.* at 142. As a result, the SSEB downgraded Novetta’s rating from “Good” to “Acceptable.” *See id.* at 141-42. With respect to the Problem Statements, Novetta was not assigned any strengths under either problem statement, and Novetta was assigned one weakness for its approach to Problem Statement 1. Separately, Novetta was assigned one strength for its approach to Small Business Utilization. Finally, the Agency evaluated Novetta’s price and found it reasonable, complete, and balanced. *See id.* at 144. The resulting ratings for Novetta were summarized in the debriefing as follows:

Offeror Name	Factor 1	Factor 2	Factor 3		Factor 4	Factor 5
	Innovation	Past Performance	Problem Statement 1	Problem Statement 2	Small Business	Price
Novetta, Inc	Acceptable					\$291,803,529
		Substantial Confidence	Acceptable	Acceptable	Good	

Ex. C, SSEB Extract, p. 144.

47. On June 19, 2018, Novetta submitted written questions to the Agency regarding its evaluation, pursuant to the Agency's written offer in the debriefing. On June 25, 2018, the Agency provided written responses, along with a copy of the Agency's evaluation of Novetta's price proposal and a redacted version of the Source Selection Decision Document ("SSDD"). The redacted SSDD revealed that every offeror which received a rating of "Good" or better under the Innovation factor, which should have included Novetta based on the TEB's evaluation, received contract awards.

E. The GAO Protests

48. On June 29, 2018, Novetta filed a bid protest at the GAO contesting the Agency's evaluations and award decision. The protest was docketed as B-414672.4, and a protective order was issued.

49. Three other disappointed offerors (Technatomy Corporation, OGSystems LLC and Solers Inc.) filed protests at the GAO also challenging the Agency's evaluations and award decisions under the RFP. The GAO did not consolidate the four protests.

50. Novetta's GAO protest contended that: (a) the Agency had unreasonably evaluated Novetta under the most important factor, Factor 1, Innovation, by virtue of the SSEB having stripped away multiple strengths assigned to Novetta by the TEB, and by the Agency having failed to recognize other strengths that should have been assigned to Novetta's proposal; (b) the Agency had unreasonably evaluated Novetta under Factor 3, Problem Statements, by assigning an irrational weakness to Novetta and arbitrarily failing to recognize numerous strengths present in Novetta's responses to the problem statements; (c) the procurement was tainted by a latent ambiguity in the RFP that prevented offerors from competing on a level playing field, as borne out through the significant disparity in the offerors' total evaluated prices;

(d) the Agency's decision not to hold discussions was unreasonable and contrary to DFARS 215.306(c); and (e) the Agency's best value determination was defective and insufficiently documented.

51. On July 30, 2018, DISA filed its Agency Report with the GAO.

52. In response to the Agency Report, Novetta filed timely comments and supplemental protests grounds on August 9, 2018. Novetta's supplemental protest grounds emphasized numerous instances of unreasonably disparate treatment in the Agency's evaluation record. In particular, Novetta highlighted instances under both Factor 1 and Factor 3 where awardees or other offerors were assigned strengths for aspects of their proposals that were similar to Novetta's proposal, but for which Novetta did not receive a corresponding strength. Novetta explained that if its proposal had been evaluated on an evenhanded basis, then it would have been in line for a contract award.

53. On August 16, 2018, DISA filed a Supplemental Agency Report with the GAO.

54. On August 23, 2018, Novetta filed its comments on the Supplemental Agency Report reiterating and elaborating upon its contentions that the Agency had unreasonably and disparately evaluated proposals under Factors 1 and 3, improperly declined to hold discussions, and issued a defective and inadequately documented award decision.

55. On October 9, 2018, the GAO issued four separate decisions sustaining in part all four post-award protests. *Novetta, Inc.*, B-414672.4, Oct. 9, 2018, 2018 CPD ¶ 349; *Technatomy Corp.*, B-414672.5, Oct. 9, 2018, 2018 CPD ¶ 353; *OGSystems, LLC*, B-414672.6, Oct. 9, 2018, 2018 CPD ¶ 352; *Solers, Inc.*, B-414672.3, Oct. 9, 2018, 2018 CPD ¶ 350.

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56. With respect to Novetta's contention that the Agency had unreasonably evaluated its proposal under Factor 1, the GAO found it was unreasonable for the SSEB to remove the first strength that had originally been assigned to Novetta by the TEB under RFP § L.4.2.3.1.

57. In particular, the GAO determined that the SSEB's justification for removing this strength was circular, explaining as follows:

The TEB's comments were specific and, importantly, identified the impact of Novetta's experience on contract performance. Specifically, the TEB assessed a strength explaining that Novetta provided "detailed descriptions" of innovative projects related to [REDACTED]. AR, Tab 62, SSEB Report, at 141. The TEB found that these projects were "similar to the acquisition structure and complex problem domains of SETI" and, therefore, "increase[] the probability of success on future SETI task performance." *Id.* In this respect, the TEB's comments demonstrate that it believed the proposal exceeded the RFP's requirement in that Novetta's innovative projects not only align with DISA's mission needs, but also are particularly beneficial in the context of the SETI procurement.

In disagreeing with the TEB, the SSEB did not explain how it reached its conclusion to remove the strength; rather, it simply restated verbatim the definition of a strength and concluded that this aspect of the proposal did not meet that definition. *See* AR, Tab 62, SSEB Report, at 142. As the agency represents, the SSEB relied upon the definition of a "strength" as set forth in the DoD Source Selection Procedures. MOL/COS at 38. This internal agency guidance provides that a "[s]trength is an aspect of an offeror's proposal that has merit or exceeds specified performance or capability requirements in a way that will be advantageous to the Government during contract performance." DoD Source Selection Procedures, Apr. 1, 2016, at 40, available at <https://www.acq.osd.mil/dpap/policy/policyvault/USA004370-14-DPAP.pdf> (last visited Oct. 9, 2018). Accordingly, the SSEB's rationale for removing the strength was simply that the SSEB "did not agree that this was [a strength]." AR, Tab 62, SSEB Report, at 142.

Novetta, Inc., B-414672.4, *supra* at 13 (footnote omitted).

58. The GAO concluded that Novetta was prejudiced by the Agency's evaluation and sustained this aspect of the protest. *Id.* at 25-26.

59. The GAO also found that the Agency's assignment of a weakness to Novetta's proposal under Problem Statement 1 was based upon an unreasonable reading of Novetta's proposal and demonstrated unequal treatment. Because Novetta's proposal had been assigned an Acceptable rating under Problem Statement 1, the GAO determined that this error alone was not prejudicial. However, the GAO commented that, in light of the sustained protest grounds, "the agency may want to consider removing this weaknesses as part of any corrective action it takes." *Id.*

60. In regard to the best value determination, the GAO found that the Agency's source selection approach had placed undue emphasis on the adjectival ratings without considering the underlying technical merit of the proposals.

61. Particularly, the Agency had utilized a source selection approach that selected awardees in successive rounds, whereunder the first pool of awards was made to all offerors rated at least Good under the Innovation factor. The second pool of awards was made to those offerors that received a rating of Acceptable under the Innovation factor, as well as ratings of Substantial Confidence on the Past Performance factor and Good or better on both problem statements. The third pool of awards was made to those offerors with a rating of Acceptable under the Innovation factor, Substantial Confidence on the Past Performance factor, and Good on at least one problem statement. The offerors' total prices, all of which were found to be fair and reasonable, played no (or at a minimum very little) role in the Agency's award decisions.

62. Consistent with Novetta's allegations, the GAO concluded that the Agency's approach had neglected to give consideration to whether Novetta's proposal (which received one strength under the most important factor but was still rated as Acceptable thereunder) should have been valued more highly than the proposals of certain awardees that had no strengths under Factor 1, but were more highly rated on the RFP's third-most important factor. In essence, the source selection authority had placed undue emphasis on the adjectival ratings and neglected to consider the strengths underlying those ratings. Accordingly, the GAO sustained Novetta's protest on this additional basis.

63. The GAO denied Novetta's other protest grounds. The GAO recommended that DISA reevaluate Novetta's proposal under the Innovation factor, consider removing the weakness assigned under the Problem Statements factor, and prepare a new source selection decision with appropriate consideration given to all evaluation factors.

F. The Agency's New Award Decision

64. On February 13, 2019, Novetta received notice from DISA that the Agency had completed its corrective actions and that Novetta remained an unsuccessful offeror. The letter also served as Novetta's debriefing and reflected that Novetta's adjectival ratings were unchanged as a result of DISA's reevaluation. Attached to the letter were (1) a "Redacted Technical Report" purporting to explain the Agency's reevaluation in response to the GAO's decision, and (2) a redacted version of the Agency's new best value determination. *See* Ex. D and E, respectively.

65. The Redacted Technical Report makes clear that the Agency's corrective action was narrowly tailored to refute the GAO's decision related to the unreasonable removal of Novetta's strength under § L.4.2.3.1 – without considering any other issues raised in Novetta's

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protest or those sustained in any other offerors' protest. The document begins by reciting excerpts from the GAO's decision summarizing that the SSEB had failed to document a rational basis for removing Novetta's strength under § L.4.2.3.1, as well as the solicitation requirement and corresponding evaluation criteria at § M.2.2.2. Then, the Redacted Technical Report vaguely asserts that this aspect of Novetta's proposal is still not considered a strength because it does not meet the definition of a strength, *i.e.*, a definition derived from internal agency guidance that was not included in the RFP and is inconsistent with the evaluation criteria at § M.2.2.2. Ex. D, pp. 1-3.

66. Specifically, DISA's new analysis of this strength states as follows:

(Pages 2-1, 2-2 of *Team Novetta Volume 2 Tab C Proposal*) The offeror describes their core competency in [REDACTED]. Novetta outlines [REDACTED] strategic objectives for DISA and describe specific projects in detail with associated solutions delivered [REDACTED]. These exhibits show that the offeror has experience aligning with DISA's mission needs and requirements as required by Section L of the SETI RFP which *meets* the criteria.

The response to "Describe how the company's core competency of Innovation significantly aligns with DISA's mission needs and requirements" was both responsive and complete. The offeror's proposal indicates an *adequate* approach and understanding of Innovation which warrants a rating of "Acceptable." Novetta's proposal gives DISA a general awareness of the alignment of work to be performed on the SETI contract to ensure awardees are able to satisfy future task orders. Past performance of the selected projects was not evaluated as part of the criteria, simply the overall alignment of efforts with SETI areas of interest. The offeror did not exceed the requirements that would have identified a strength or provide for anything that would have been a benefit to the Government above the requirement of the RFP.

REDACTED VERSION

To reiterate, Novetta's proposal does not demonstrate an ability above and beyond what was required in the solicitation which was **“Describe how the company's core competency of Innovation significantly aligns with DISA's mission needs and requirements.”** Thus, the offeror's response cannot be classified as a strength because there is no aspect that has merit or exceeds specified performance and capability requirements of the solicitation (nor is the failure to align with all areas a flaw in the proposal that increases the risk of unsuccessful contract performance). Rather, the proposal addresses all Innovation elements and indicates an *adequate* approach and understanding of Innovation.

Exhibit D, p. 3 (emphasis in original).

67. Thus, while DISA included more words this time in rejecting the first strength that had been assigned to Novetta by the TEB, DISA relied upon the same circular explanation that the GAO found unreasonable, namely, it is not a strength because it does not meet the definition of a strength set forth in the internal agency guidance document.

68. The redacted best value determination reflects that the only change in the awardees was the addition of Solers, Inc. (“Solers”), whose proposal rating under Factor 1 was elevated from Acceptable to Good. Ex. E, pp. 1-2. Solers' proposal was assigned two additional strengths under Factor 1 (for a total of three strengths), evidently based on the GAO's October 2018 decision finding that the Agency's failure to assign the two additional strengths to Solers was the product of an unequal evaluation. *Id.*, p. 29. The awardees, their ratings and prices were identified as follows:

REDACTED VERSION

Offeror Name	Factor 1	Factor 2	Factor 3		Factor 4	Factor 5
	Innovation	Past Performance	Problem Statement 1	Problem Statement 2	Small Business	Price
IBM	Outstanding	Substantial Confidence	Acceptable	Good	Good	\$234,935,046
Accenture Federal Services, LLC	Outstanding	Neutral Confidence	Good	Good	Good	\$179,632,424
Northrop Grumman	Good	Substantial Confidence	Good	Good	Good	\$269,623,861
Vencore	Good	Substantial Confidence	Acceptable	Acceptable	Outstanding	\$156,662,569
BAH	Good	Substantial Confidence	Acceptable	Acceptable	Good	\$134,266,455
LEIDOS	Good	Substantial Confidence	Acceptable	Acceptable	Good	\$144,662,993
Solers	Good	Substantial Confidence	Acceptable	Acceptable	Good	\$157,193,400
Harris Corporation	Good	Satisfactory Confidence	Outstanding	Outstanding	Good	\$184,752,341
BAE Systems	Acceptable	Substantial Confidence	Outstanding	Good	Good	\$156,962,323
NES Associates LLC	Acceptable	Substantial Confidence	Good	Good	Good	\$137,217,707
LinQuest Corporation	Acceptable	Substantial Confidence	Good	Good	Good	\$175,049,125
Deloitte	Acceptable	Substantial Confidence	Acceptable	Good	Outstanding	\$126,180,137
Parsons	Acceptable	Substantial Confidence	Good	Acceptable	Outstanding	\$178,181,282
KeyW Corp	Acceptable	Substantial Confidence	Good	Acceptable	Good	\$123,192,620
AASKI	Acceptable	Substantial Confidence	Good	Acceptable	Good	\$181,683,274

Ex. E, pp. 1-2.

69. In accordance with the Department of Defense’s Class Deviation 2018-0011, “Enhanced Post Award Debriefings,” Novetta submitted timely questions to the Agency regarding its debriefing on February 15, 2019. Among other things, Novetta’s questions pointed out that one awardee whose evaluation results seemed comparable to Novetta’s evaluation results (NES Associates LLC (“NES”)) was identified in the best value determination as having a strength under Factor 1; whereas, the GAO’s October 2018 decision had noted that NES had no strengths under Factor 1.

REDACTED VERSION

70. On February 20, 2019, the Agency provided its responses to Novetta's questions. Ex. F. In relevant part, the Agency stated that the best value determination had misstated the strengths assigned to NES. The Agency included a "redlined" version of the pages at issue that casually crossed out the reference to NES's strength without any apparent consideration of its impact on the evaluation or trade-off decision. Ex. G.

COUNT I

UNREASONABLE AND IMPROPER EVALUATION UNDER FACTOR 1, INNOVATION

71. Plaintiff realleges and incorporates by reference the allegations of Paragraphs 1 through 70 above, as if fully set forth herein.

72. It is established that, although source selection officials are permitted to disagree with the findings of technical evaluators, to be reasonable, there must be some documented and rational explanation for doing so. *Information Sciences Corp. v. United States*, 73 Fed. Cl. 70, 120 (2006); *AdvanceMed Corp.*, B-415062, Nov. 17, 2017, 2017 CPD ¶ 362 (“[W]hile source selection officials may reasonably disagree with the evaluation ratings and results of lower-level evaluations, they are nonetheless bound by the fundamental requirements that their independent judgments must be reasonable, consistent with the stated evaluation factors, and adequately documented.”); *Immersion Consulting, LLC*, B-415155, Dec. 4, 2017, 2017 CPD ¶ 373 (sustaining protest where source selection authority unreasonably removed strength assigned by the source selection evaluation board).

73. Relatedly, FAR 15.308 obligates procuring agencies to reasonably document source selection decisions, which “shall include the rationale for any business judgments and tradeoffs made or relied on by the [source selection authority], including benefits associated with additional costs.”

74. Additionally, FAR 15.305 requires procuring agencies to “evaluate competitive proposals and then assess their relative qualities solely on the factors and subfactors specified in the solicitation.”

A. The SSEB Improperly Removed Strength 1 Assigned to Novetta

75. The strength assigned to Novetta by the TEB under RFP § L.4.2.3.1, *i.e.*, for having demonstrated “innovative projects” that were “similar to the acquisition structure and complex problem domains of SETI” and “demonstration of experience [REDACTED] DISA mission areas increases the probability of success on future SETI task performance,” was entirely consistent with the RFP instructions and evaluation criteria.

76. On the other hand, the SSEB’s removal of this strength on the stated basis that it did not “exceed[] specified performance and capability requirements of the solicitation” is inconsistent with the RFP instructions and evaluation criteria at RFP § M.2.2.2. In fact, DISA’s explanation for removing this strength is no different than the circulator rationale that the GAO already rejected.

77. Moreover, the RFP did not require offerors to meet specified performance requirements or capabilities under the Innovation factor. Rather, the RFP made clear that proposals would be differentiated under this factor if they “demonstrate[d] continuous investment in Innovation through evidence of sustained, year-after-year investment in technologies and innovative ways to develop new capability, improve service, reduce costs and create efficiencies” and had “[v]alidated processes and procedures that demonstrate useful metrics and achieved results based on innovative processes.” Ex. B, RFP Am. 4, § M.2.2.2.

78. If the Agency had stated its intention for offerors to propose specified capabilities under the Innovation factor, then Novetta would have submitted a substantially different proposal.

79. Further, the Agency assigned strengths to other offerors under the Innovation factor based on their satisfaction of the elements under RFP § M.2.2.2, rather than based upon whether the proposal offered specified performance or capability in excess of the PWS requirements. For example, the GAO's decision on Solers' protest explains that Solers was assigned a strength under the Innovation factor for having "demonstrated exceptional experience developing many different types of technologies that directly align to DISA mission areas..." *Solers, Inc.*, B-414672.3, *supra*. The SSEB's recognition of that strength for Solers, which is based on Solers' past experiences with various technology, is not based on Solers' offer to exceed any particular performance or capability requirement in the PWS. Thus, the SSEB's removal of this TEB-assigned strength to Novetta's proposal is not only unreasonable but also a product of disparate treatment in the evaluation.²

80. Similarly, the GAO's decision on Solers' protest quotes the SSEB's description of two strengths assigned to other awardees under Factor 1, which included one awardee receiving a strength for having "relationships" with universities and another awardee having a strength for its "experience" working with a various technologies from infancy to full development. Neither of those strengths was based on an aspect of the awardee's proposal which exceeded performance or capability requirements of the PWS. Rather, like Novetta's strength that was

² If exceeding capability requirements was really the standard that the Agency applied in assigning strengths under Factor 1, one cannot help but wonder how any offeror could have exceeded the performance or capability requirements of an evaluation element that required explaining how the offeror's "core competency of Innovation significantly aligns with DISA's mission needs and requirements."

improperly removed, those strengths were based on demonstrated continuous investments in innovation and validated processes and procedures.

81. Upon information and belief, the evaluation record will demonstrate many additional examples whereby strengths were assigned to awardees under Factor 1 based on their satisfaction of the criteria in RFP § M.2.2.2, instead of based upon whether the proposal offered “capabilities” that exceeded the PWS requirements.

82. The Agency’s use of internal guidance that was not published with the RFP to determine whether Novetta’s proposal warranted this additional strength is inconsistent with the RFP and the evaluations of other offerors. In fact, it appears to be a standard that was used solely for the purposes of the reevaluation and was not used as the benchmark for assessing proposal strengths assigned to the awardees under Factor 1.

83. As the GAO previously concluded, the addition of this strength to Novetta’s proposal could have reasonably impacted the evaluation and award decision, such that this repeated error alone on the Agency’s part is prejudicial to Novetta.

B. The SSEB Improperly Combined the Second and Third Strengths Assigned to Novetta

84. The second and third strengths assigned to Novetta by the TEB under RFP § L.4.2.3.3, *i.e.*, for “demonstrating innovation that [REDACTED] [REDACTED]” and “demonstrating the ability to innovate [REDACTED] [REDACTED],” were entirely consistent with the RFP instructions and evaluation criteria.

85. On the other hand, the SSEB’s consolidation of these strengths into one strength because they both “cite examples of Novetta’s history of engineering and deploying innovation solutions” is inconsistent with the RFP terms and the Agency’s evaluations of other proposals.

86. For example, in the GAO's decision on Solers' protest, the GAO explained that Solers had been assigned one strength under § L.4.2.3.3 for its history of engineering and deploying innovative solutions, and that to be consistent with the evaluations of the awardee proposals, Solers should have been assigned a second strength under § L.4.2.3.3 for having "provided three examples of solutions that it developed from infancy to maturity across a wide range of technologies."

87. The two strengths that the GAO found should have been assigned to Solers are substantially similar to the two strengths that the TEB assigned to Novetta, but the SSEB unreasonably consolidated Novetta's into one strength. Moreover, as in the case of Solers' strengths, Novetta's two strengths arose under separate bullets of this element in the evaluation criteria.

88. Further, the Agency's February 2019 best value determination reflects that Solers' total strengths under Factor 1 were increased from one to three, meaning that Solers' Good rating under Factor 1 was a result of the additional two strengths assigned under § L.4.2.3.3.

89. Accordingly, the SSEB's consolidation of two distinct strengths that had been assigned to Novetta under RFP § L.4.2.3.3 is unreasonable and a product of disparate evaluation treatment.

C. The SSEB Improperly Removed the Fourth Strength Assigned to Novetta

90. The fourth strength assigned to Novetta by the TEB under Factor 1, RFP § L.4.2.3.4, *i.e.*, for Novetta's "[p]articipation and contributions within various standards making bodies," was also consistent with the RFP instructions and evaluation criteria.

91. The Agency's contemporaneous documentation explaining the SSEB's removal of this strength was woefully insufficient, a fact with which the GAO expressed its agreement in

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its October 2018 decision on Novetta's protest. The GAO, however, improperly considered the Agency's post-protest arguments, which attempted to minimize the impact of Novetta's contributions to standards making bodies. Consideration of the Agency's post hoc explanations was improper because those explanations were inconsistent with the evaluation record, namely, the TEB having concluded that Novetta's contributions were substantial and "raises the probability of success" in contract performance.

92. The Agency's post hoc explanations for removing this strength also waffled during the course of the GAO protest – first contending that the strength was removed because Novetta did not [REDACTED], then arguing that Novetta did not [REDACTED], and finally arguing that Novetta's proposal was different from an awardee's proposal that was assigned a strength because Novetta did not *receive an award* with its contributions – the latter of which is not even included in the RFP as a consideration under this element.

93. In sum, there was no rational basis for removing this strength assigned to Novetta, and this results in yet another example of disparate treatment in the evaluation where at least one awardee was assigned a strength despite having very similar participation in standards making bodies.

94. For all of these reasons, the Agency's removal of two strengths and combination of two strengths assigned to Novetta under Factor 1 was unreasonable, a product of disparate treatment, inconsistent with the evaluation criteria set forth in the RFP, and contrary to law and regulation including FAR 15.305, FAR 15.308 and the Competition in Contracting Act, 41 U.S.C. §§ 3301, 3306.

COUNT II

UNEQUAL EVALUATION UNDER FACTOR 1, INNOVATION

95. Plaintiff realleges and incorporates by reference the allegations of Paragraphs 1 through 94 above, as if fully set forth herein.

96. It is fundamental that agencies must treat all offerors equally, and therefore must evaluate offers evenhandedly against common requirements and evaluation criteria. *E.g.*, *CW Government Travel, Inc. v. United States*, 110 Fed. Cl. 462 (2013); *Will Technology, Inc.; Paragon TEC, Inc., B-413139.4 et al.*, June 11, 2018, 2018 CPD ¶ 209 (sustaining protest, in part, where proposals were evaluated unequally).

97. Here, even aside from the evaluation errors discussed in Count I, if the Agency had evaluated offerors in an evenhanded manner, Novetta would have been assigned at least three more strengths under Factor 1.

98. First, Novetta should have received a strength under Factor 1, Element 1, “Corporate Philosophy/Culture on Innovation” (§ L.4.2.3.1), bullet 4, just like awardees

██████████ for ██████████
██████████. This aspect of the RFP required offerors to “[d]escribe the company’s culture regarding employee’s pursuit of Innovation and how they are rewarded for doing so.” Ex. B, p. 41.

99. The GAO concluded there was a substantive difference in ██████████
██████████ proposals because those awardees supposedly ██████████
but Novetta, too, included ██████████
██████████.

100. Particularly, Novetta’s proposal explained that [REDACTED]

[REDACTED]

[REDACTED] Thus, like awardees [REDACTED], Novetta should have received a strength for this aspect of its proposal.

101. Second, like awardee [REDACTED], Novetta should have received a strength under Factor 1, Element 1, “Corporate Philosophy/Culture on Innovation” (§ L.4.2.3.1), bullet 5, for

[REDACTED]

[REDACTED]. This aspect of the RFP required offerors to “[d]escribe the company’s partnerships/relationships with SETI-relevant innovators that align with PWS task areas[.]” Ex. B, p. 41.

102. Similar to [REDACTED] having included [REDACTED] companies with which it maintains partnerships, Novetta’s proposal identified [REDACTED]

[REDACTED].

103. The GAO’s decision summarily concluded that [REDACTED] proposal included great detail on [REDACTED], but Novetta’s proposal also included detail to explain [REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

and Novetta should have been assigned a strength similar to that assigned [REDACTED]

104. Third, like awardee [REDACTED], Novetta should have received a strength under Factor 1, Element 5, “Certifications, Accreditations, Awards, Achievements, Patents” (§ L.4.2.3.5), bullet 1, for having [REDACTED]. This aspect of the RFP required offerors to “[l]ist and describe Awards and Achievements received that were awarded because of Innovation.” Ex. B, p. 42.

105. The GAO’s decision attempted to distinguish the proposals of [REDACTED] and Novetta by stating that [REDACTED] included more detail than Novetta. However, the additional “detail” in [REDACTED] proposal was not substantive, and it was not cited in the evaluation record as the basis for assigning the strength. Accordingly, Novetta should have also been assigned a strength for having [REDACTED].

106. Accordingly, for these additional reasons, the Agency’s evaluation of Novetta under Factor 1 was unreasonable, a product of disparate treatment, inconsistent with the evaluation criteria set forth in the RFP, and contrary to law and regulation including FAR 15.305, FAR 15.308 and the Competition in Contracting Act, 41 U.S.C. §§ 3301, 3306.

COUNT III

UNEQUAL EVALUATION UNDER FACTOR 3, PROBLEM STATEMENTS

107. Plaintiff realleges and incorporates by reference the allegations of Paragraphs 1 through 106 above, as if fully set forth herein.

108. Novetta’s proposal was assigned zero strengths and no weaknesses under Problem Statement 1, which required offerors to propose a plan “to develop an internal consolidated

personnel management system capable of managing the applicable aspects of the DoD’s Hire-to-Retire (H2R) program for civilian employees at DISA.”

109. At least three aspects of Novetta’s proposal should have been assigned strengths under Problem Statement 1, wherein Novetta offered the same capabilities as other offerors that were assigned strengths.

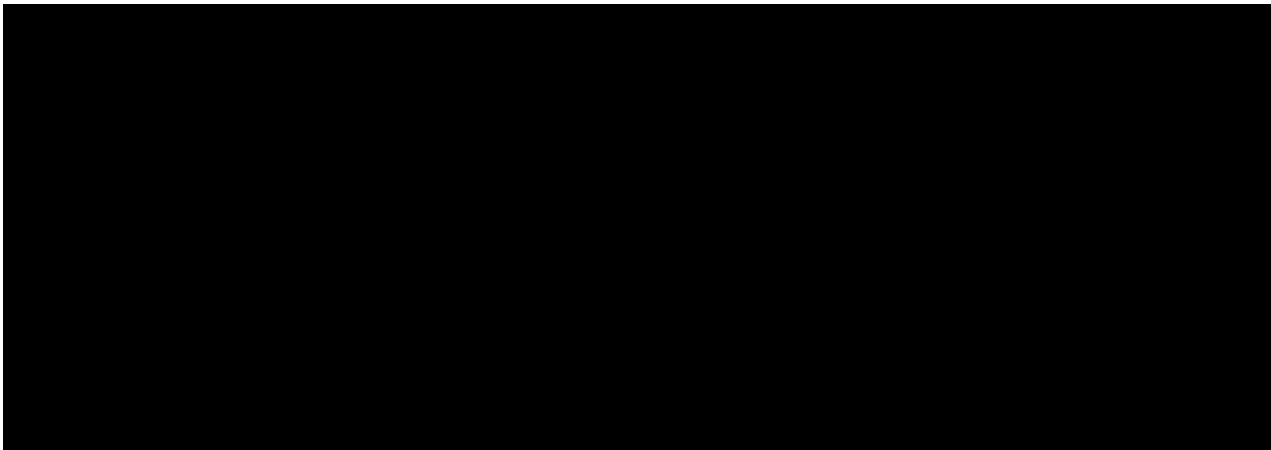
110. First, Novetta should have been assigned a significant strength for its [REDACTED], just as awardee [REDACTED] was assigned a significant strength. A key facet of Novetta’s proposed approach to Problem Statement 1 was its [REDACTED]. This was repeatedly emphasized throughout Novetta’s proposal as shown in the sampling of excerpts below:

- [REDACTED]
- [REDACTED]
- [REDACTED]

111. The GAO's decision concluded that [REDACTED] offer to [REDACTED] [REDACTED] [REDACTED] was just one aspect of the strength assigned to [REDACTED] and distinguished the proposals on that basis. However, the SSEB report evidenced that [REDACTED] was the primary basis for this strength. Therefore, in an evenhanded evaluation, Novetta would have also received a significant strength for this element of its proposal.

112. Second, Novetta should have been assigned a strength under Problem Statement 1, like awardee [REDACTED], for proposing to [REDACTED] [REDACTED].

113. In fact, Novetta's Problem Statement 1 narrative also demonstrates [REDACTED] [REDACTED] [REDACTED] [REDACTED] as depicted below.



114. The GAO's decision acknowledged that Novetta's approach was comparable to [REDACTED], but declined to find unequal treatment due to the Agency's fallback argument that [REDACTED] included greater detail. The GAO's reliance on the Agency's post hoc assertion was unreasonable and unsupported by the evaluation record.

115. Third, Novetta should have been assigned a strength under Problem Statement 1, like [REDACTED] and another offeror (referred to by the GAO as “Offeror A”), for their [REDACTED].

116. In this regard, Novetta’s proposal repeatedly described its plan to [REDACTED]

[REDACTED]

[REDACTED] As explained in Novetta’s Problem Statement 1 proposal:

[REDACTED]

117. The GAO’s decision essentially concluded that other aspects of [REDACTED] led to the strengths assigned to [REDACTED] and Offeror A, but the GAO’s distinction [REDACTED] from Novetta’s approach was not logical and was inconsistent with the SSEB’s descriptions of those strengths.

118. Further, Novetta’s proposal was assigned zero strengths and no weaknesses under Problem Statement 2, which required offerors to detail a plan for developing an architectural framework for a mobile environment that would serve DISA stakeholders, including the activities, elements and resource flows from any mobile device to a back-end server.

119. Novetta’s GAO protest asserted that at least three aspects of Novetta’s proposal should have been assigned strengths under Problem Statement 2, whereunder Novetta offered the same capabilities as other offerors that were assigned strengths. The GAO’s decision neglected to address any of those strengths, and Novetta maintains that unreasonably disparate evaluations

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resulted in the Agency's failure to identify any strengths in Novetta's proposal under Problem Statement 2.

120. For all these reasons, the Agency's evaluation of Novetta under Factor 3, Problem Statements, was unreasonable, a product of disparate treatment, inconsistent with the evaluation criteria set forth in the RFP, and contrary to law and regulation including FAR 15.305, FAR 15.308 and the Competition in Contracting Act, 41 U.S.C. §§ 3301, 3306.

COUNT IV

VIOLATION OF DFARS 215.306(C)

121. Plaintiff realleges and incorporates by reference the allegations of Paragraphs 1 through 120 above, as if fully set forth herein.

122. DFARS 215.306(c) makes "discussions the default procedure for source selections [by DoD agencies] for procurements at or above \$100 million." 75 Fed. Reg. 71647-01, Nov. 24, 2010, DFARS Case 2010-D013. Agencies only retain the discretion not to conduct discussions in such a procurement "if inappropriate for a particular circumstance." *Id., e.g., Sci. Applications Int'l Corp.*, B-413501, Nov. 9, 2016, 2016 CPD ¶ 328 ("SAIC"); *see also Dell Federal Systems, L.P., v. United States*, 906 F.3d 982, 995-96 (Fed. Cir. 2018) (citing SAIC for the proposition that "discussions are *the expected course of action* in [Department of Defense] procurements valued over \$100 million" and upholding the Army's reasonable conclusion that it likely violated DFARS 215.306(c) by neglecting to engage in discussions under a \$5 billion procurement).

123. This procurement, valued at \$7.5 billion, has an even greater value than the procurement at issue in the SAIC and Dell decisions. Yet, the Agency has declined to hold discussions with offerors.

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124. The Agency's avoidance of its obligations is particularly egregious here where the initial proposals – at the time of DISA's reevaluations – are nearly two years old and, according to the RFP, the resulting contracts are supposed to be designed to offer “emerging technologies,” “critical” services and capabilities, and “innovative” systems and ideas. *Technologies addressed and pricing proposed in the April 2017 proposals are now clearly outdated and stale.*

125. Moreover, there was no clear break in technical superiority that justified departing from the default rule. In fact, nearly half of the 15 awardees had the same rating as Novetta under the most important factor – an unremarkable rating of Acceptable. Further, all of the awardees had the same rating as Novetta under the second-most important factor, Past Performance. Thus, the Agency had to resort to making distinctions under sub-factors of the third-most important factor to identify the awardees.

126. The Agency's failure to comply with DFARS 215.306(c) renders the award decision as unreasonable and in violation of law and regulation.

COUNT V

UNREASONABLE AND INADEQUATE BEST VALUE DETERMINATION

127. Plaintiff realleges and incorporates by reference the allegations of Paragraphs 1 through 126 above, as if fully set forth herein.

128. Based on the foregoing evaluation errors, the Agency's best value determination is fundamentally flawed. As the GAO previously concluded, any increase in the standing of Novetta's proposal under Factor 1, Innovation, could have reasonably impacted its rating and the award decision. Likewise, the additional strengths that should have been assigned to Novetta's proposal under Factor 3, Problem Statements, could have reasonably impacted its ratings and the

REDACTED VERSION

award decision, especially since seven of the 15 awardees were assigned the exact same adjectival ratings as Novetta under the first two factors.

129. In addition to those evaluation errors, the Agency's award decision neglects to give adequate consideration to the strength assigned to Novetta's proposal under the most important factor, Innovation, and in light of the fact that multiple awardees had no strengths under that factor, including [REDACTED]. If the Agency had reasonably considered Novetta's merit under the most important factor in accordance with the RFP's criteria, there is a substantial chance that the Agency would have ranked Novetta among the best value offerors.

130. The Agency's failure to reasonably and adequately document its award decision is contrary to law and regulation, including FAR 15.305 and FAR 15.308.

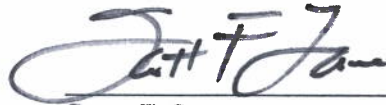
PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court enter judgment for Plaintiff on this Complaint for injunctive and declaratory relief prohibiting DISA from proceeding with performance of the 15 contracts awarded under the RFP, declaring that DISA's evaluations of Novetta's proposal under Factors 1 and 3 were unreasonable, improper and the product of disparate treatment, declaring the DISA's refusal to hold discussions is contrary to DFARS 215.306(c), declaring that DISA's best value determination is unreasonable and inadequately documented, and requiring DISA to correct such errors in compliance with applicable laws and regulations.

In addition, Plaintiff requests that this Court afford Plaintiff such other and further relief as this Court may deem just and proper.

REDACTED VERSION

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott F. Lane", written over a horizontal line.

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Novetta, Inc.

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Thompson Coburn LLP

Dated: March 4, 2019

REDACTED VERSION

CERTIFICATE OF SERVICE

I hereby certify that on March 4, 2019, I caused copies of the Plaintiff's Complaint to be served by electronic mail upon:

John Roberson, Esq.
U.S. Department of Justice
Commercial Litigation Branch
1100 L Street, NW, 8th Floor
Washington, DC 20530
John.Roberson@usdoj.gov (email)

A handwritten signature in cursive script that reads "Scott F. Lane". The signature is written in black ink and is positioned above a horizontal line.

Scott F. Lane