



United States Government Accountability Office
Washington, DC 20548

DOCUMENT FOR PUBLIC RELEASE

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

Decision

Matter of: Smartronix, Inc.; ManTech Advanced Systems International, Inc.

File: B-411970; B-411970.2; B-411970.3; B-411970.4

Date: November 25, 2015

James H. Roberts, III, Esq., Van Scoyoc Kelly & Roberts PLLC, for Smartronix, Inc.; and Stuart B. Nibley, Esq., Andrew N. Cook, Esq., and Amy M. Conant, Esq., K&L Gates LLP, for ManTech Advanced Systems International, Inc., the protesters. Robert J. Symon, Esq., Aron C. Beezley, Esq., and Jennifer F. Brinkley, Esq., Bradley Arant Boult Cummings LLP, for Jacobs Technology Inc., the intervenor. Jaron E. Chriss, Esq., and Adrienne D. Bolton, Esq., General Services Administration, for the agency. Evan D. Wesser, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protests challenging the adequacy of the agency's cost realism evaluation are sustained where the agency's evaluation failed to reasonably evaluate whether vendors' proposed direct labor rates were realistic and consistent with the vendors' unique proposed approaches.
 2. Protest challenging the agency's determination that the awardee did not have a disqualifying organizational conflict of interest is denied where the protester fails to present hard facts indicating the existence of a conflict and where the contracting officer reasonably found that no conflict existed.
 3. Protest challenging the agency's evaluation of the awardee's proposal under the capability demonstration and transition plan factors is denied where the record demonstrates that the agency's evaluation was reasonable and consistent with the terms of the solicitation.
-

DECISION

Smartronix, Inc., of Hollywood, Maryland, and ManTech Advanced Systems International, Inc., of Herndon, Virginia, protest the award of an order to Jacobs Technology Inc., of Tullahoma, Tennessee, under request for quotations (RFQ) No. ID04150017, which was issued under the General Services Administration

(GSA) Alliant Government Wide Acquisition Contract (GWAC), for the provision of technical support services to the Air Force's Air Combat Command, 53rd Wing Operations.¹ The protesters challenge the agency's cost realism evaluation. Smartronix also alleges that the awardee has an unmitigable organizational conflict of interest (OCI) and challenges the agency's evaluation of Jacobs' proposal under the capability demonstration and transition plan factors.

We sustain the protests in part and deny them in part.²

BACKGROUND

The RFQ, which was issued by GSA on behalf of the Air Force on June 18, 2015, and subsequently amended six times, sought proposals from GSA Alliant contract holders for information technology technical support for weapons and computer systems to support systems development and operations activities. RFQ, Performance Work Statement (PWS), at 1.³ The awardee will provide support to the Air Force at Eglin Air Force Base (AFB) in Florida, Nellis AFB in Nevada, Tyndall AFB in Florida, Lackland AFB in Texas, Creech AFB in Nevada, and Patuxent River in Maryland. Id. at 2. The RFQ anticipated the award of a hybrid task order, which would include cost-plus-award-fee and fixed-price contract line items, with a 9-month base period and four 1-year option periods. Id. at 2, 4.

The RFQ contemplated a two-phase evaluation process. In phase one, interested vendors were invited to provide an oral capability demonstration. RFQ at 3. During the capability demonstration, the agency asked vendors a core set of questions based on the PWS's requirements. Id. at 4. Each capability demonstration was limited to 3 hours, with a potential additional 30-minute period for the government to ask clarifying questions. Id. at 5. The agency was to assign a level of confidence based on the vendor's proposed approach to meeting the technical requirements as set forth during the capability demonstration. Id. at 6.

¹ The Alliant GWAC is a multiple-award, indefinite-delivery/indefinite-quantity contract for various information technology services.

² Our Office did not consolidate the protests during the initial development of the cases. Therefore, GSA submitted separate agency reports in each of the respective protests that followed a common numbering scheme for the exhibits to the reports. References to the "agency report" are to the agency report filed in the Smartronix protest, which is designated as "SAR." Where necessary to distinguish, references to the agency report filed in the ManTech protest use the designation "MAR."

³ References herein to the RFP or its attachments are to the version of the RFQ conformed through amendment No. 6.

After the oral presentations, GSA was to notify each vendor whether it was deemed to be a “viable competitor” based on its capability demonstration confidence rating. Id. at 3. Regardless of whether a vendor was deemed to be a “viable competitor,” all vendors that had participated in oral demonstrations were invited to submit a phase two quotation. Id. The phase two quotation was to include three written volumes: (1) transition plan; (2) past performance; and (3) price.⁴

Under the transition plan factor, GSA was to evaluate: (1) whether the vendor addressed each item required in the transition-in plan as required by the PWS; (2) the measure of the government’s confidence in how well the vendor demonstrated its understanding of the requirements; and (3) a sound management approach to effectively transition contract services. Id. at 7. Under the past performance factor, the agency was to evaluate its confidence in the vendor’s ability to successfully perform the requirements of the PWS based on the vendor’s performance on recent and relevant projects. Id. at 9.

Under the price factor, GSA was to evaluate for price reasonableness and cost realism. Id. at 11. With respect to cost realism, the agency was to evaluate a vendor’s proposed labor categories, proposed labor hours, and indirect costs, along with the submitted supporting documentation. Id. In addition to submitting the information required in the RFQ’s pricing attachment, vendors were required to submit additional information, including, as relevant here: (1) current documentation showing that their cost accounting system has been determined adequate by their cognizant auditing agency; and (2) supporting information regarding the method and data that were used to determine the hourly wage rates for the proposed labor positions and why the proposed wages were sufficient to hire and maintain an experienced work force. Id. at 10.

Award was to be made to the vendor whose quotation provided the best value to the government. Id. at 4. The non-price evaluation factors were to be significantly more important than price. Id. Among the non-price factors, the capability demonstration factor was to be more important than the transition plan and past performance factors, combined. Id.

GSA received seven letters of interest to participate in the capability demonstrations, and six of those vendors ultimately provided oral presentations. SAR, Tab 23, Fair & Reasonable Price Determination & Award Decision (Award Decision) (Aug. 13, 2015), at 3. Following the capability demonstrations, four vendors, including the protesters and awardee, were notified that they had been

⁴ As discussed herein, the resulting order will include both cost-reimbursement and fixed-price contract line items. The RFQ, however, characterized the evaluation factor as the “price” factor. For the purposes of this decision, we use the RFQ’s nomenclature of the “price” factor.

deemed “viable competitors.” Id. Only the four “viable competitors” submitted phase two quotations. Id. Following discussions and the submission of revised quotations, GSA evaluated the vendor’s final quotations as follows:

	Jacobs	Vendor 4	ManTech	Smartronix
Capabilities Demonstration	Significant Confidence	Medium Confidence	Significant Confidence	High Confidence
Transition Plan	Significant Confidence	High Confidence	Significant Confidence	High Confidence
Past Performance	Medium Confidence	Medium Confidence	Significant Confidence	High Confidence
Evaluated Price⁵	\$218,937,711	\$224,688,196	\$252,451,978	\$290,604,383

Id. at 93.

The source selection authority (SSA) compared Jacobs’ lowest-priced quotation against each of the other three vendors who had submitted final proposals. Id. at 93-94. In his analysis, the SSA compared the vendors’ respective adjectival ratings for the non-price factors and focused on the relative price premiums associated with the other vendors’ proposals as compared to Jacobs’ total evaluated cost/price. Id. Based on that trade-off analysis, the SSA selected Jacobs’ quotation as offering the best value to the government. Id. at 94. Following debriefings, these timely protests were filed with our Office.⁶

DISCUSSION

Smartronix and ManTech both challenge GSA’s evaluation of the realism of Jacob’s proposed costs. Smartronix also alleges that the agency unreasonably evaluated an alleged unmitigable OCI arising from Jacobs’ previous work for the Air Force at Eglin AFB, as well as challenging the agency’s evaluation of Jacobs’ proposal under two of the non-price evaluation factors.

⁵ Pursuant to the RFQ, GSA was to evaluate as part of the total evaluated price the cost/price for the six month option to extend services period under Federal Acquisition Regulation clause 52.217-8 by adding to the vendors’ total proposed cost/price one half of the proposed cost/price for the last option year. RFQ at 11-12. The above figures include the cost/price for the six month option to extend services period. SAR, Tab 23, Award Decision (Aug. 13, 2015), at 93. The figures have been rounded to the nearest whole dollar.

⁶ The awarded value of the task order at issue exceeds \$10 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of orders under multiple award ID/IQ contracts. 41 U.S.C. § 4106(f).

The task order competition here was conducted among Alliant contract holders pursuant to Federal Acquisition Regulation (FAR) part 16. In reviewing protests of awards in a task order competition, we do not reevaluate proposals but examine the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations. DynCorp Int'l LLC, B-411465, B-411465.2, Aug. 4, 2015, 2015 CPD ¶ 228 at 7; Diamond Info. Sys., LLC, B-410372.2, B-410372.3, Mar. 27, 2015, 2015 CPD ¶ 122 at 7. For the reasons that follow, we find that the agency's cost realism evaluation was flawed, and therefore sustain the protests on that basis. We find that the agency's evaluation was otherwise reasonable, and therefore deny the remaining protest grounds.⁷

Cost Realism Evaluation

The protesters challenge the adequacy of GSA's cost realism evaluation, arguing that the agency failed to meaningfully evaluate the realism of Jacobs' proposed direct labor rates. Specifically, the protesters contend that the agency's cost realism evaluation was limited to a cursory comparison of the labor rates proposed by the four competing vendors, and that the evaluation otherwise failed to evaluate the realism of any of the proposed rates individually. GSA contends that the scope of the agency's cost realism evaluation was within the sound and informed discretion of the contracting officer, and that it reasonably concluded that all vendors' proposed costs were realistic. For the reasons that follow, we sustain the protests.

When an agency evaluates a proposal for the award of a cost-reimbursement contract or order, an offeror's proposed 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), 15.404-1(d); Exelis Sys. Corp., B-407673 et al., Jan. 22, 2013, 2013 CPD ¶ 54 at 7 (considering FAR part 15 cost realism standards in a FAR part 16 task order procurement); CGI Fed. Inc., B-403570 et al., Nov. 5, 2010, 2011 CPD ¶ 32 at 5 n.1 (same). Consequently, an agency must perform a cost realism analysis to determine the extent to which an

⁷ The protesters raise other collateral arguments. While our decision does not specifically address every argument, we have considered all of the protesters' additional assertions and find that none provides any independent basis to sustain the protests. For example, both protesters challenge the reasonableness of the agency's best-value tradeoff and resulting source selection decision. In light of our decision sustaining the challenges to the cost realism evaluation and recommendation that the agency conduct a new evaluation, which in turn could require a new source selection decision, we need not address the challenges to the current source selection decision.

offeror's proposed costs are realistic for the work to be performed. FAR § 15.404-1(d)(1); DynCorp Int'l LLC, *supra*, at 8. An agency is not required to conduct an in-depth cost analysis, *see* FAR § 15.404-1(d)(1), or to verify each and every item in assessing cost realism; rather, the evaluation requires the exercise of informed judgment by the contracting agency. AdvanceMed Corp.; TrustSolutions, LLC, B-404910.4 *et al.*, Jan. 17, 2012, 2012 CPD ¶ 25 at 13. While an agency's cost realism analysis need not achieve scientific certainty, the methodology employed must be reasonably adequate and provide some measure of confidence that the rates proposed are reasonable and realistic in view of other cost information reasonably available to the agency at the time of its evaluation. Tantus Techs., Inc., B-411608, B-411608.3, Sept. 14, 2015, 2015 CPD ¶ 299 at 10. Our review of an agency's cost realism evaluation is limited to determining whether the cost analysis is reasonably based and not arbitrary. TriCenturion, Inc.; Safeguard Servs., LLC, B-406032 *et al.*, Jan. 25, 2012, 2012 CPD ¶ 52 at 6.

Overview of GSA's Analysis of Jacobs' Proposed Costs

GSA represents that the contracting officer conducted a multi-step cost realism evaluation. First, the contracting officer, in consultation with the technical evaluators, states that he considered the vendors' proposed level of effort and labor mix. The RFQ included a workforce projection that provided the anticipated level of effort and labor mix for each performance location. SAR, Tab 11A(1), Workforce Projection. The RFQ instructed that "[a]n offeror's quote for the base and option years shall be based on this level of effort projected and the PWS requirements stated herein." RFQ, PWS, at 4. Three of the vendors proposed the 302 full time equivalents (FTE) and labor mix set forth in the workforce projection, while ManTech proposed [DELETED] FTEs. SAR, Tab 23, Award Decision (Aug. 13, 2015), at 83; MAR, Tab 5, Evaluation Team Leader Decl. (Sept. 23, 2015), at 2. Thus, the material distinguishing factors between the vendors' price quotations were the vendors' proposed labor rates, indirect rates, and maximum fee rates.

In response to the protest, the contracting officer states that he reviewed the vendors' supporting cost data and methodologies. *See, e.g.*, MAR Contracting Officer Statement of Facts (COSF) (Sept. 23, 2015) at 11. The only evidence of the review in the contemporaneous record, however, is the statement in the Award Decision document that "each offeror's cost data and methodology was rational[] and reasonable." SAR, Tab 23, Award Decision (Aug. 13, 2015), at 83. In response to GAO's specific request for supplemental written clarification regarding whether the contracting officer actually reviewed any underlying market survey data, the contracting officer stated that "Jacobs provided, as part of its supporting cost data, data from Salary.com," and that "the agency reviewed and determined [that the data] supported the conclusion that Jacobs' proposed labor rates were

realistic.”⁸ SAR Supp. COSF (Nov. 6, 2015) at 9. Jacobs’ pricing attachment included Salary.com data reflecting the 10th, 25th, 50th, 75th, and 90th percentile for each labor category in the relevant geographic locations. SAR, Tab 19D, Jacobs’ Revised Pricing Attachment (Aug. 6, 2015), “Labor Rates” Worksheet. The contracting officer also explained in his response to GAO’s questions that he also considered the following information concerning Jacobs’ proposed costs: (1) knowledge of the local labor market based on its 30 years of experience in the geographic areas; (2) skills progression program involving training, opportunities for advancement, and mentoring; (3) corporate reach-back capabilities; and (4) cost accounting system documentation. SAR Supp. COSF (Nov. 6, 2015) at 5-6.

The contracting officer also reviewed and compared the vendors’ proposed labor rates for the base period of performance. The contracting officer examined the vendors’ proposed unburdened direct labor rates and determined how many of the labor categories for which each vendor proposed the lowest and/or highest unburdened direct labor rates:

	Labor Categories with Lowest Direct Labor Rates	Labor Categories with Highest Direct Labor Rates
Jacobs	[DELETED]	[DELETED]
ManTech	[DELETED]	[DELETED]
Vendor 4	[DELETED]	[DELETED]
Smartronix	[DELETED]	[DELETED]

SAR, Tab 23, Award Decision (Aug. 13, 2015), at 83.

The contracting officer explained that this analysis could “indicate the potential to stabilize the workforce labor rates” because “[b]y offsetting an employee with a proposed higher rate who accepts a lower rate than proposed, the company has potential added ‘buying power’ to target the key or critical employees who have been paid an unexpected premium but may not accept a lower labor rate.” *Id.* The contracting officer then prepared a chart comparing each vendor’s proposed unburdened direct hourly labor rates and burdened (excluding fee) hourly labor rates for each labor category. *Id.* at 83-84. Beyond the comparison of the competing rates and methodologies utilized by the vendors for preparing the rates, the contracting officer did not evaluate individual labor category rates for realism. SAR Supp. COSF (Nov. 6, 2015) at 7.

The contracting officer next compared the differences between the vendors’ proposed unburdened direct labor rates and proposed burdened labor rates. For

⁸ Salary.com is a commercial service that tracks salary data for various labor positions throughout U.S. labor markets.

purposes of this calculation, the contents of the “burden rates” varied by vendor, but all generally included indirect cost components such as fringe benefits, general & administrative expenses, and overhead costs. The contracting officer found that the average differences between the unburdened and burdened labor rates for the vendors were:

	Average Difference Between Burdened & Unburdened Rates
Jacobs	[DELETED] percent
Vendor 4	[DELETED] percent
ManTech	[DELETED] percent
Smartronix	[DELETED] percent

AR, Tab 23, Award Decision (Aug. 13, 2015), at 85.

The contracting officer described the purpose of this analysis as follows:

This method helped determine how much more overall flexibility the company has if they offered an incumbent employee the labor rate proposed but discovered that amount was not adequate to retain the qualified and experienced employee. The company could choose to forego some indirect costs, or even potential fee which is not included in the average above, for certain critical or key positions should they need to pay more without negatively impacting the company’s proposed cost ceiling or future performance. The higher the overhead/indirect cost percentage, the more flexibility a company has.

Id.

The contracting officer concluded his analysis by evaluating the vendors’ proposed indirect rates for other direct costs, training, material, and subcontracting support, as well as their proposed award fee rates. Id. at 86-88. We now turn to the protesters’ specific challenges to GSA’s evaluation of Jacobs’ direct labor rates and indirect cost rates.

Evaluation of Jacobs’ Direct Labor Rates

The protesters contend that GSA’s cost realism evaluation was inadequate because it did not specifically evaluate the realism of any proposed labor category, but, rather, only consisted of a generalized, high-level comparison of the four vendors’ proposed rates. The protesters also contend that the agency was required to rely on historical labor rates, versus market rates, in light of the significant number of incumbent personnel that were to be retained by the follow-on contractor. GSA responds that the scope and depth of its cost realism evaluation were within the

contracting officer's discretion, and the contracting officer exercised his reasonable discretion in conducting the cost realism evaluation. The agency contends that cost comparison is an acceptable method for conducting a cost realism evaluation, and that further evaluation was unnecessary because the vendors' unique approaches and methodologies reasonably supported the variances in the proposed direct labor rates. GSA also contends that it reasonably looked at relevant market data provided by Jacobs, as opposed to exclusively relying on historic incumbent rates, and reasonably considered Jacobs' past performance in cost control under cost reimbursement contracts and experience hiring technical personnel in the relevant labor markets.

As discussed above, an agency's cost realism analysis need not consider every element of an offeror's cost proposal, nor must the analysis achieve scientific certainty regarding the realism of an offeror's proposed costs. The methodology employed, however, must be reasonably adequate and provide some measure of confidence that the rates proposed are reasonable and realistic in view of other cost information reasonably available to the agency at the time of its evaluation. Tantus Techs., Inc., *supra*; Iron Vine Security, LLC, B-409015, Jan. 22, 2014, 2014 CPD ¶ 193 at 7 (sustaining a protest of an agency's realism evaluation for a time-and-materials task order utilizing cost realism analysis where the agency did not evaluate the realism of vendors' proposed labor rates). Here, we find GSA's analysis was flawed with respect to analyzing the realism of vendors' proposed direct labor rates.

As an initial matter, we find, contrary to the protesters' arguments, that certain underlying components of GSA's cost realism methodology concerning the evaluation of direct labor rates were reasonable. For example, while consideration of the incumbent's historical rates, as advocated by the protesters, is one acceptable method for evaluating the realism of a vendor's proposed costs, it is not the only reasonable data point that can be considered. Here, the contracting officer determined that it was prudent to also consider relevant market survey data provided by vendors because market prices could have changed since the time of the previous award to Smartronix, who is the incumbent, and realism has to be evaluated based on a vendor's unique approach. SAR Supp. COSF (Nov. 6, 2015) at 3. Additionally, the contracting officer could, as part of a reasonable cost realism analysis, compare the proposed rates of the four vendors. See FAR § 15.404-1(c)(2)(iii)(C). Thus, we do not find objectionable GSA's consideration of multiple types of data in its cost realism evaluation, as opposed to limiting its evaluation only to historical incumbent data.

While these components of GSA's cost realism methodology are reasonable in the abstract, our concern with the agency's cost realism evaluation is that once the agency acquired these data points, it performed no further analysis or probing to determine whether the proposed rates were realistic. In this regard, the contracting officer represented that "[b]y reviewing and analyzing a comparison of the offerors'

proposed labor rates across individual labor categories, with consideration to the various methodologies used to determine the offerors' costs, it became apparent that evaluation of each individual labor category rate would not have provided any practical value in the evaluation." SAR Supp. COSF (Nov. 6, 2015) at 7. In short, it appears that the agency concluded that each vendor proposed low rates for some positions, high rates for other positions, and that the differences, on balance, presented no overall realism concerns. This limited high-low analysis, however, is inconsistent with the FAR's cost realism requirements. Specifically, the FAR contemplates that:

Cost realism analysis is the process of independently reviewing and evaluating specific elements of each offeror's proposed cost estimate to determine whether the estimated proposed cost elements are realistic for the work to be performed; reflect a clear understanding of the requirements; and are consistent with the unique methods of performance and materials described in the offeror's technical proposal.

FAR § 15.404-1(d)(1) (emphasis added).

As addressed above, although the agency was not required to evaluate every element of a vendor's proposed costs or obtain scientific certainty as to the most probable anticipated cost of performance to the government, the agency's failure to evaluate the realism of any of the individual rates for any of the labor categories for any of the vendors was not reasonable. We discuss below three examples which illustrate the flaws with GSA's cursory evaluation.

First, although the agency prepared a chart listing each vendor's proposed direct unburdened labor rates for each labor category, GSA concedes it did not conduct any realism analysis for any individual labor category. SAR Supp. COSF (Nov. 6, 2015) at 7. For example, the contracting officer represented that "some labor category rates amongst offerors were consistent" because there was no more than a \$3.00 difference between those rates. Id. at 6. In some cases, including the highlighted examples below, however, a variance of \$3.00 per hour could potentially be material; additionally, the \$3.00 spread in some circumstances only applied to the difference between the vendor proposing the lowest direct labor rate and the vendor offering the next lowest direct rate. As a result, this analysis ignored examples where the other two vendors offered rates in excess of \$3.00 more than the lowest proposed rate. An example of this scenario is illustrated by the [DELETED] position: Jacobs' proposed unburdened hourly labor rate was only [DELETED] less, but more than [DELETED] percent lower, than the vendor who proposed the next lowest rate for the position. See AR, Tab 23, Award Decision (Aug. 13, 2015), at 84. As discussed in greater detail below, this difference was also potentially material in terms of Jacobs' own proposed approach and the supporting market survey data it submitted.

Similarly, with respect to the [DELETED] position, Jacobs' proposed unburdened direct hourly rate was only [DELETED] less, but more than [DELETED] percent lower, than the vendor who proposed the next lowest rate for the position. See id. While these variances could theoretically be found realistic following meaningful consideration of Jacobs' proposed approach and supporting cost data with respect to these positions, we cannot conclude that they are reasonable in the absence of any such contemporaneous analysis by the agency. Thus, the cursory level comparison of competing proposed rates, without more, was not sufficient to provide a reasonable measure of confidence that the proposed rates were realistic.

Second, GSA's representation that it relied on the labor rate data provided by Jacobs does not demonstrate that the agency's cost realism evaluation was reasonable, as the contemporaneous record does not show any meaningful analysis of this data. For example, Jacobs represented in its cost proposal narrative that "[w]e recognize that there are critical positions . . . that are key to the success of your mission and will demand skilled professionals [DELETED]." SAR, Tab 19G, Jacobs' Revised Price Quotation (Aug. 6, 2015), at 6. With respect to these "critical positions," Jacobs stated that "[t]hese individuals are difficult to recruit and retain, [DELETED]." Id. Jacobs represented that [DELETED] of the 302 FTEs were identified as filling "critical positions," and would be subject to "increased recruiting focus and higher levels of compensation [DELETED]." Id. Jacobs further explained that it "assigned the highest priority level to the [DELETED] percentile of Salary.com survey data and the lower priority group to the [DELETED] percentile of Salary.com survey data." Id. at 7. For all other positions, Jacobs represented that it would propose rates consistent with the [DELETED] percentile of Salary.com data. Id.

One of the "critical positions" identified by Jacobs was the [DELETED] labor category. Id. The workforce projection for the [DELETED] labor category anticipated [DELETED]. SAR, Tab 11A(1), Workforce Projection, at 1. Jacobs proposed [DELETED] unburdened direct labor rate for [DELETED] of [DELETED] per hour. SAR, Tab 19D, Jacobs' Revised Pricing Attachment (Aug. 6, 2015), "Base Year Rates" Worksheet. The other vendors proposed, respectively, hourly rates for the [DELETED] position of: [DELETED]; [DELETED]; and [DELETED]. SAR, Tab 23, Award Decision (Aug. 13, 2015), at 84.

Even if Jacobs' low proposed rate compared to its competitors did not put GSA on notice that further evaluation was necessary, the agency should have been aware of an apparent inconsistency between Jacob's proposed rates and its submitted supporting cost data. In this regard Jacobs' proposed unburdened labor rate for the position is not consistent with its proposed approach in the cost narrative. According to Jacobs, the [DELETED] labor category corresponds to the job title [DELETED] on Salary.com. SAR, Tab 19D, Jacobs' Revised Pricing Attachment (Aug. 6, 2015), "Labor Rates" Worksheet. Based on the Salary.com data provided

in Jacobs' proposal for [DELETED], the average annual salaries and associated hourly rates for the position are:

Percentile	Annual Salary	Hourly Rate
10	[DELETED]	[DELETED]
25	[DELETED]	[DELETED]
50	[DELETED]	[DELETED]
75	[DELETED]	[DELETED]
90	[DELETED]	[DELETED]

Id.

Had GSA reasonably considered the information provided in Jacobs' proposal, it would have found that Jacobs' proposed labor rate for this position was at the [DELETED] percentile. This appears to be inconsistent with Jacobs' proposed approach to compensate individuals in "critical positions" at either the [DELETED] or [DELETED] percentiles. SAR, Tab 19G, Jacobs' Revised Price Quotation (Aug. 6, 2015), at 6. In this regard, we note that the other vendors all proposed rates for TS/SCI cleared personnel for this position at least at the [DELETED] percentile. SAR, Tab 23, Award Decision (Aug. 23, 2015), at 84. GSA should have reasonably questioned why a "critical position" identified by Jacobs was proposed to be paid at the lowest proposed compensation tier, when Jacobs' proposal indicated that higher compensation levels would be paid to individuals filling a "critical position." Thus, the analysis performed by the agency does not appear to have reasonably considered the realism of Jacobs' proposed unburdened labor hour rates in connection with Jacobs' own proposed approach.

Third, the contemporaneous evaluation record does not address the realism of Jacobs' proposed rates with respect to the awardee's ability to capture the large number of incumbent personnel contemplated by the PWS and Jacobs' own proposed approach. The PWS includes a performance requirement that the contractor will be responsible for transitioning 90 percent of the incumbent workforce. RFQ, PWS, at 28. Additionally, Jacobs' proposal reflects that it intends to retain at least [DELETED] percent of the incumbent workforce (but it also maintains a [DELETED]). SAR, Tab 19A, Jacobs' Transition-In Plan (July 27, 2015), at 11. Smartronix is the incumbent prime contractor, and ManTech is an incumbent subcontractor. SAR Supp. COSF (Nov. 6, 2015) at 8.

While we agree that the agency was not bound to automatically find Smartronix's and ManTech's rates, which were based in part on historical rates paid by the firms in performance of the incumbent contract, as the mandatory benchmarks for realism, there is no contemporaneous documentation demonstrating that the agency analyzed whether the market rates relied upon by Jacobs would be sufficient to retain personnel who are currently being paid higher rates under the incumbent contract. In the absence of any contemporaneous supporting rationale

for the agency's determination that Jacobs' proposed rates, which departed from the historical rates paid to incumbent personnel, were sufficient to retain the high percentage of incumbent personnel that were anticipated to be retained, we cannot conclude that the agency's cost realism evaluation was reasonable in this respect.

In sum, GSA's evaluation of vendors' proposed direct labor rates was insufficient to provide a reasonable measure of confidence with respect to whether the proposed rates were realistic and what the most probable cost to the government would be for Jacobs' performance. The agency's failure to probe, beyond a high-level comparison of vendors' general proposed rates, failed to verify whether the vendors' proposed direct labor rates were consistent with and realistic based on the vendors' proposed approaches and underlying supporting cost data. Therefore, we sustain the protest on this basis.

Evaluation of Jacobs' Indirect Costs

In addition to concerns with the reasonableness of the contracting officer's evaluation of vendors' proposed labor rates, we also are concerned with GSA's contemporaneously documented views regarding vendors' proposed indirect rates. Specifically, the contracting officer represented that he believed a contractor could and would forego indirect cost recovery or fee to increase labor rates that were insufficient as proposed to retain incumbent personnel, and therefore the higher a vendor's proposed indirect rates, the more "flexibility" it would have to mitigate the consequences of low proposed direct labor rates. SAR, Tab 23, Award Decision (Aug. 13, 2015), at 85.⁹

First, the observations appear to rely on assumptions that are not consistent with the associated risks and consequences to the government in the event a vendor underbid certain labor categories on a cost-reimbursement type contract or order. The contracting officer's view that a vendor could have flexibility to forego recovery of indirect costs or fee in the event they were unable to retain incumbent personnel at lower proposed rates is inconsistent with the fundamental principle of conducting

⁹ In its post-protest submissions, GSA attempts to diminish the significance of the contemporaneous analysis, arguing that "[t]his observation was not central to the cost realism analysis." SAR Supp. COSF (Nov. 6, 2015) at 10. In light of the extremely limited contemporaneous cost realism evaluation record, the prominent place of the analysis in the contemporaneous evaluation, and statements in the contracting officer's supplemental written submission that are consistent with the previous analysis, we ascribe little weight to the agency's attempts to diminish the importance of the analysis. In this regard, we give little weight to post hoc statements or arguments that are inconsistent with the contemporaneous record. Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15.

a cost realism analysis when awarding a cost-reimbursement type contractor or order. That is, since the government, not the contractor, bears the cost risk associated with unrealistically low proposed costs on a cost reimbursement contract or order, it is the very purpose of a cost realism analysis to determine whether a vendor's proposed costs are realistic and reasonably represent the most probable cost of performance to the government. R&D Maint. Servs., Inc., B-292342, Aug. 22, 2003, 2003 CPD ¶ 162 at 8 (recognizing that on a cost reimbursement type contract or order the government "bears the risk and responsibility to pay the contractor its actual allowable costs regardless of the costs proposed by the offeror").

We also do not find persuasive the agency's view that the application of the "contract ceiling" or a contractor's concern with maintaining a positive past performance record for "cost control" are sufficient mechanisms for controlling costs in lieu of conducting a proper cost realism evaluation when awarding a cost-reimbursement type contract or order. In this regard, GSA does not identify, nor do we see, any provision in the RFQ that would cap a vendor's direct labor rates. Cf. RFQ at 11 (finding a vendor's proposed total labor category hourly rates in excess of its published Alliant labor rates would "be subject to a fair and reasonable determination by the Contracting Officer"). Furthermore, the import of the agency's observation is contradictory. Under the contracting officer's analysis, since Jacobs proposed [DELETED] indirect costs, it would [DELETED] to shift indirect labor costs to direct labor costs in the event that it underbid a labor category. SAR, Tab 23, Award Decision (Aug. 13, 2015), at 85. Therefore, because we are concerned that the contemporaneous analysis suggests that the agency applied fair and reasonable price analysis considerations in lieu of cost realism analysis considerations, we also sustain the protest on this basis.

On this record, we find that GSA failed to conduct a reasonable cost realism evaluation, and therefore sustain the protests.¹⁰

¹⁰ In its supplemental comments, ManTech for the first time raises additional specific challenges to the cost realism evaluation. For example, ManTech alleges that GSA failed to reasonably consider Jacobs' assumption that it would be able to hire new employees at rates [DELETED] percent lower than the rates it proposed for the base year of the contract. ManTech Supp. Comments (Nov. 11, 2015) at 18-19 (citing MAR, Tab 19C, Jacobs' Initial Price Quotation (July 27, 2015)). The protester also argues that the agency unreasonably failed to consider that Jacobs proposed that its FTEs would only work [DELETED] hours per year, while the other three vendors proposed [DELETED] hours per year, based on the awardee's assumptions regarding the time estimated to fill vacant positions. The protester alleges that this resulted in GSA not comparing proposals on an "apples-to-apples basis." ManTech Supp. Comments (Nov. 11, 2015) at 19 (citing inter alia MAR, Tab 23, Award Decision (Aug. 13, 2015)). Additionally, ManTech asserts that GSA
(continued...)

Organizational Conflict of Interest (OCI)

Smartronix alleges that Jacobs has an unmitigated OCI arising from work that it is currently performing for the Air Force at Eglin AFB under a separate contract, and that this conflict precluded it from award. The protester argues that Jacobs' other contract includes an express prohibition restricting Jacobs' ability to compete for other contracts at Eglin AFB due to unequal access to information concerns. Smartronix also alleges that Jacobs should have been excluded from this competition because Jacobs' work under the other contract put it in a position to "shape" the Air Force's requirements that are being procured under the RFQ. Smartronix Comments (Oct. 1, 2015) at 3. GSA responds that, in consultation with the Air Force, it reasonably found that Jacobs' other work for the Air Force does not present any OCI concerns relevant to the RFQ, and specifically refutes the protester's other allegations. For the reasons that follow, we find no basis to sustain Smartronix's protest on this ground.

The FAR requires that contracting officials avoid, neutralize, or mitigate potential significant conflicts of interest so as to prevent an unfair competitive advantage or the existence of conflicting roles that might impair a contractor's objectivity. FAR §§ 9.504(a), 9.505. The situations in which OCIs arise, as described in FAR subpart 9.5 and the decisions of our Office, can be broadly categorized into three groups: (1) biased ground rules; (2) unequal access to information; and (3) impaired objectivity. As relevant here, an unequal access to information OCI

(...continued)

unreasonably relied on Jacobs' provisional, instead of historical, indirect rates, and failed to resolve an inconsistency in the awardee's indirect rate proposal. ManTech Supp. Comments (Nov. 11, 2015) at 21-22 (citing MAR, Tab 19C, Jacobs' Initial Price Quotation (July 27, 2015); Tab 19F, Jacobs' Evaluation Notice Responses (Aug. 6, 2015)). These arguments, however, are entirely based on information contained in the exhibits to the agency report produced prior to ManTech's submission of its initial comments, not on any new information produced in connection with the agency's supplemental agency report. Where a protester initially files a timely protest, and later supplements it with new grounds of protest, the later-raised allegations must independently satisfy our timeliness requirements, since our Regulations do not contemplate the piecemeal presentation or development of protest issues. Epsilon Sys. Solutions, Inc., B-409720, B-409720.2, July 21, 2014, 2014 CPD ¶ 230 at 11. We therefore find these supplemental arguments to be untimely, and do not address them herein. Although we do not consider these untimely arguments, in light of our recommendation that GSA conduct a new cost realism evaluation and the fact that the government will ultimately bear any risk of cost growth, the agency may wish to consider these issues during its reevaluation.

exists where a firm has access to nonpublic information as part of its performance of a government contract, and where that information may provide the firm a competitive advantage in a later competition for a government contract. FAR § 9.505(b); Cyberdata Techs., Inc., B-411070 et al., May 1, 2015, 2015 CPD ¶ 150 at 6. A biased ground rules OCI arises where a firm, as part of its performance of a government contract, has in some sense set the ground rules for the competition for another government contract by, for example, writing the PWS or providing materials upon which a PWS was based. FAR §§ 9.505-1, 9.505-2. In these cases, the primary concern is that the firm could skew the competition, whether intentionally or not, in favor of itself. Energy Sys. Grp., B-402324, Feb. 26, 2010, 2010 CPD ¶ 73 at 4.

In reviewing protests that challenge an agency's conflict of interest determinations, our Office reviews the reasonableness of the contracting officer's investigation and, where an agency has given meaningful consideration to whether an OCI exists, we will not substitute our judgment for the agency's, absent clear evidence that the agency's conclusion is unreasonable. DV United, LLC, B-411620, B-411620.2, Sept. 16, 2015, 2015 CPD ¶ 300 at 6. In this regard, the identification of conflicts of interest is a fact-specific inquiry that requires the exercise of considerable discretion. Health Innovation & Tech. Venture, B-411608.2, Sept. 14, 2015, 2015 CPD ¶ 298 at 5. A protester must identify hard facts that indicate the existence or potential existence of a conflict; mere inference or suspicion of an actual or potential conflict is not enough. ViON Corp.; EMC Corp., B-409985.4 et al., Apr. 3, 2015, 2015 CPD ¶ 141 at 10.

Jacobs is currently performing engineering, technical, and acquisition support services for the Air Force at Eglin AFB under the Technical & Engineering Acquisition Support 6 (TEAS) contract. SAR, Tab 4, Air Force Contracting Officer's Decl. (Sept. 17, 2015), at 1. The TEAS contract includes a clause titled EGLIN-H012, Avoidance of Organizational Conflict of Interest (OCI), which states, in relevant part:

(a) Omnibus prohibition. The parties recognize that the Contractor will play a very visible and responsible role in the fulfillment of a comprehensively broad spectrum of Air Force requirements at Eglin AFB FL. This role creates access to "inside information" and the potential appearance of unfair competitive advantage. The technical judgment of the Contractor will influence research, development, and test products and the Contractor may have a key technical review role over other Contractors' work. . . . [T]he Contractor agrees not to compete on any other acquisition at Eglin AFB until two years after completion of this contract. . . . [T]he Contracting Officer (CO) may grant exceptions to this prohibition on a case-by-case basis in instances where there exists no reasonable

appearance that the Contractor has an unfair competitive advantage or that his objectivity may be impaired.

SAR, Tab 33, TEAS Contract Excerpt, at 26.

In June 2015, Jacobs requested that the Air Force contracting officer for the TEAS contract grant an exemption to allow Jacobs to compete on this procurement. SAR, Tab 4, Air Force Contracting Officer's Decl. (Sept. 17, 2015), at 2. In reviewing the exemption request, she reviewed the PWS for the TEAS contract and the RFQ at issue here, and consulted with the Air Force program managers for both the TEAS contract and for the work being procured under the RFQ. Id. The Air Force contracting officer concluded that the scopes of work for the TEAS contract and RFQ were materially different and did not present OCI concerns. Specifically, under the TEAS contract, Jacobs provides technical and engineering acquisition support for the design, development, and testing of weapons requirements at Eglin AFB. SAR, Tab 40, Air Force Contracting Officer's Supp. Decl. (Oct. 8, 2015), at 2. In contrast, the RFQ here is for information technology technical support for weapons and computer systems. Id. On June 25, she granted Jacobs the requested exemption from the OCI provision, determining "[b]ased on the current information available, there are no known actual or apparent conflicts of interest or appearances that Jacobs has an unfair advantage."¹¹ SAR, Tab 34, Email from Air Force Contracting Officer (June 25, 2015), at 1.

Notwithstanding the exemption granted by the Air Force finding the absence of any actual or apparent OCIs, Smartronix challenges GSA's determination that Jacobs' respective work on the TEAS contract and the resulting order under the RFQ do not present any material OCI concerns. The protester primarily alleges that the TEAS contract requires Jacobs to provide design, development, and acquisition support services, which in turn gives Jacobs "the ability to obtain inside information about 53rd Wing requirements and to shape--through Jacobs[] design, development, and acquisition support efforts under the TEAS PWS--the 53rd Wing requirements that are now the subject of this GSA competitive procurement action." Smartronix Comments (Oct. 1, 2015) at 3; see also Smartronix Supp. Comments (Oct. 15,

¹¹ The exemption granted by the Air Force contracting officer from the omnibus prohibition clause appears to have been a determination made under the terms of the TEAS contract, and not an OCI waiver pursuant to the authority of FAR § 9.503. Under the waiver authority, an agency head or designee, not below the level of the head of the contracting activity, may, as an alternative to avoiding, neutralizing, or mitigating an OCI, execute a waiver determining that application of the FAR's OCI provisions in a particular circumstance is not in the government's best interest. FAR § 9.503; AT&T Gov't Solutions, Inc., B-407720, B-407720.2, Jan. 30, 2013, 2013 CPD ¶ 45 at 4. Here, the contracting officer found that no OCI existed, so no waiver appears to have been necessary.

2015) at 15-16 (citing the TEAS contract PWS's requirements for contract administration and acquisition support). Smartronix also generally challenges the GSA contracting officer's reliance on the OCI investigation conducted, and representations submitted, by Air Force personnel.¹²

In response to Smartronix's protest allegations, the GSA contracting officer conducted an investigation, which included, among other steps: (1) coordinating with GSA counsel; (2) gathering information from the Air Force contracting officer for the TEAS contract and Air Force technical personnel; (3) obtaining declarations from Air Force personnel; and (4) comparing the requirements of the PWSs for the TEAS contract and RFQ. SAR Supp. COSF (Oct. 8, 2015) at 3; SAR, Tab 41A, GSA OCI Determination & Findings (Oct. 8, 2015), at 4.

The Air Force contracting officer found no conflict between the work performed under the TEAS contract with the work to be performed under the RFP. SAR, Tab 40, Air Force Contracting Officer's Supp. Decl. (Oct. 8, 2015), at 2. She explained that the purpose of the TEAS contract is to support the Air Force's requirement to develop and procure air-to-ground and air-to-air weapons, and to conduct the developmental and operational testing of the weapons. Id. at 1.

¹² In its comments, Smartronix for the first time identified 14 Jacobs employees that it alleges work on the TEAS contract and "had and have the ability to obtain inside information about 53rd Wing requirements." Smartronix Comments (Oct. 1, 2015) at 6. The protester represents that this information was "readily apparent to incumbent 53rd Wing contractor Smartronix." Smartronix Supp. Comments (Oct. 15, 2015) at 5. Although GSA responded to the allegation in its supplemental agency report, see SAR, Tab 40, Air Force Contracting Officer Supp. Decl. (Oct. 8, 2015), at 3, and Tab 41, Air Force Program Manager Supp. Decl. (Oct. 8, 2015), at 2, we decline to consider the allegation because the protester provides no explanation for why this "readily apparent" information was not or could not have been known at the time of its initial protest filing. Because the protester failed to raise this allegation in its initial filing, it is untimely. 4 C.F.R. § 21.2(a)(2) (requiring protest issues be filed within 10 days after the basis is known or should have been known); Epsilon Sys. Solutions, Inc., supra. Additionally, Smartronix also alleged for the first time in its comments, that the contracting officer's exemption from the TEAS contract omnibus prohibition was expressly conditioned on Jacobs not performing any "data analysis" under the RFQ, apparently ignoring PWS ¶ 3.12.2 of the RFQ which expressly requires "data collection, reduction, and analysis." Smartronix Comments (Oct. 1, 2015) at 5. GSA specifically responded to this issue in its supplemental agency report. SAR, Tab 41, Air Force Program Manager Supp. Decl. (Oct. 8, 2015), at 2. The protester failed to rebut or otherwise substantively address the agency's response in its supplemental comments; as a result, we view this contention as abandoned. Advanced Techs. & Labs. Int'l, Inc., B-411658 et al., Sept. 21, 2015, 2015 CPD ¶ 301 at 4-5 n.4.

Jacobs also advises and assists Air Force personnel in the evaluation of original equipment manufacturer (OEM) proposals and weapon designs, as well as with designing test protocols and evaluating test results. Id. Thus, the primary OCI concerns with Jacobs' work under the TEAS contract is to ensure the integrity of the testing process by restricting Jacobs from assisting an OEM to develop a weapon or pass a weapons test. Id. In contrast, the RFQ requires information technology support services for weapons and computer technology, which the CO viewed as outside the scope of the TEAS contract. Id. at 2. For this reason, the Air Force contracting officer concluded that the work performed under the TEAS contract "did not provide Jacobs with access to any non-public information that would have given Jacobs an unfair competitive advantage to bid on the GSA solicitation." Id. at 3; see also Air Force Program Manager Supp. Decl. (Oct. 8, 2015), at 2 (representing that none of the 14 Jacobs employees that Smartronix alleged worked on the TEAS contract "had access to any information while performing at Eglin AFB that would give it an unfair competitive advantage" with respect to the RFQ).

With regard to Smartronix's biased ground rules allegation, the Air Force's program manager for the order resulting from the RFQ also submitted a declaration that no Jacobs personnel contributed or attended any meetings relating to drafting or developing the RFQ's PWS. SAR, Tab 41, Air Force Program Manager Supp. Decl. (Oct. 8, 2015), at 2. The program manager represented that he was the main drafter of the RFQ, and identified three additional Air Force personnel who assisted with the development. Id. Based on the information gathered during his investigation, the GSA contracting officer concluded that Jacobs does not have an OCI that gave it an unfair competitive advantage in bidding on the RFQ. SAR, Tab 41A, GSA OCI Determination & Findings (Oct. 8, 2015), at 4.

On this record, we find that Smartronix has failed to advance any hard facts demonstrating the existence of any potential or actual OCI or that GSA's evaluation was unreasonable. As set forth above, GSA, in consultation with knowledgeable officials from the Air Force, conducted a thorough and documented analysis of the general and specific OCI-related allegations raised by the protester. The investigation demonstrated that both GSA and the Air Force reasonably concluded that the divergent scopes of work under the two procurements did not present the type of OCI concerns alleged by the protester. Additionally, other than identifying Jacobs personnel who worked on the TEAS contract, Smartronix failed to establish that these individuals had access to any specific information that would provide an unfair competitive advantage in this procurement. Similarly, the investigation revealed that the protester's allegations that Jacobs' personnel were involved in the development and drafting of the RFP were unsupported. Therefore, we find no basis to sustain Smartronix's protest on this basis.¹³

¹³ Smartronix also argues that Jacobs made a material misrepresentation that should have resulted in exclusion from the competition when it allegedly failed to
(continued...)

Evaluation Of Jacobs's Proposal Under The Non-Price Factors

Smartronix also challenges GSA's evaluation of Jacobs' proposal under the capability demonstration and transition plan factors. In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, or substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. Computer World Servs. Corp., B-410513, B-410513.2, Dec. 31, 2014, 2015 CPD ¶ 21 at 6. Rather, we will review the record only to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. Id. A protester's disagreement with the agency's evaluation, without more, does not establish that the agency acted unreasonably. Strategic Resources, Inc., B-411024.2, Apr. 29, 2015, 2015 CPD ¶ 200 at 4. For the reasons that follow, we find that GSA's evaluation of Jacobs' proposal under the non-price factors was reasonable and in accordance with the terms of the RFQ. We discuss herein the protester's challenge to the agency's evaluation of Jacobs' proposal under the capability demonstration factor.

Smartronix challenges GSA's assignment of a "significant confidence" rating to Jacobs' proposal under the capability demonstration factor where the consensus evaluation identified two deficiencies.¹⁴ GSA responds that it reasonably evaluated Jacobs' proposal where the evaluators identified 30 combined significant strengths and strengths that offset the two identified deficiencies.

The RFQ contemplated that each vendor would participate in a three hour oral presentation to demonstrate its respective technical capabilities. RFQ at 3. During the oral presentation, the evaluators asked the vendors to address 45 questions tied to specific PWS requirements. SAR, Tab 22, Consensus Evaluation Report

(...continued)

disclose the potential OCI arising from its performance of the TEAS contract, as required by the RFQ's OCI provisions. RFQ at 14. An offeror's material misrepresentation may provide a basis for disqualification of the proposal and cancellation of the contract award based upon the proposal. RQ Constr., LLC, B-409131, Jan. 13, 2014, 2014 CPD ¶ 30 at 5. A misrepresentation is material where an agency has relied upon the misrepresentation and that misrepresentation likely had a significant impact upon the evaluation. Id. As discussed above, however, Smartronix fails to demonstrate the existence of an OCI; for this reason, we conclude that the protester also fails to demonstrate that Jacobs made any false or misleading representation.

¹⁴ A "significant confidence" rating corresponded to an evaluation that "leaves little doubt that the offeror will successfully perform the required effort." RFQ at 4 (emphasis in original).

(Aug. 13, 2015), at 2. The evaluators were to assign a confidence rating based on how well the vendor demonstrated a: (1) complete ability to perform the PWS requirements; (2) practical understanding of the operating environment for the PWS requirements; and (3) sound approach to feasibly, effectively, and efficiently implement its knowledge, capabilities, and resources to successfully perform the PWS requirements. RFQ at 6.

Based on Jacobs' oral presentation, the evaluators determined that Jacobs' approach to the PWS requirements warranted seven significant strengths, 23 strengths, and two deficiencies. SAR, Tab 22, Consensus Evaluation Report (Aug. 13, 2015), at 2-3. The evaluators found that Jacobs "adequately addressed" the remaining areas, and that no further strengths, weaknesses, or deficiencies were warranted. Id. at 5. The evaluators determined, on balance, that Jacobs' capability demonstration warranted a "significant confidence" rating because Jacobs "demonstrated an extensive or detailed understanding or capability of a majority of PWS requirements, an adequate understanding or capability in some of the PWS requirements, and limited understanding or capability in only two segments of the PWS requirements." Id. at 2.

On this record, we find that GSA's evaluation of Jacobs' proposal under the capability demonstration factor was reasonable. The technical evaluators reasonably found that, although two areas of concern were identified, Jacobs also demonstrated a strong approach warranting significant strengths and strengths for two thirds of the PWS's requirements. Id. at 2-3 (finding Jacobs warranted significant strengths or strengths for 30 of the 45 PWS requirements addressed during the oral presentation). Smartronix does not challenge any of the evaluated strengths or argue that additional weaknesses or deficiencies were present. In balance, we think that the evaluators reasonably exercised their discretion in determining that Jacobs' strong approach to meeting the majority of the PWS's requirements mitigated the risk attendant with the two evaluated deficiencies, resulting in a "significant confidence" rating. Smartronix's disagreement with the agency's evaluation, without more, is insufficient to demonstrate that the evaluation was unreasonable or inconsistent with the terms of the RFQ. Strategic Resources, Inc., supra. Additionally, GSA argues that nothing in the RFQ required an offeror with an evaluated deficiency to be excluded from the competition, and Smartronix neither contests the agency's assertion nor identifies any such solicitation provision. Therefore, Smartronix's challenge to this aspect of GSA's evaluation is denied.

CONCLUSION AND RECOMMENDATION

In summary, we find that GSA's cost realism evaluation was unreasonable because it did not adequately consider the realism of vendors' proposed direct labor rates. Because a reasonable cost realism evaluation could result in a change to the evaluated most probable costs of performance and in light of the protesters' superiority to Jacobs under the significantly more important non-price evaluation

factors, we find that the protesters have established competitive prejudice because a new best-value tradeoff could result in another vendor being selected for award.

We recommend that GSA, consistent with our decision, conduct and document a new cost realism evaluation. We further recommend that, upon the completion of a new cost realism evaluation, the agency prepare a new source selection decision and, if the awardee is other than Jacobs, terminate the award to Jacobs and make a new award. We also recommend that the agency reimburse the protesters their respective costs associated with filing and pursuing their protests, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d). The protesters' respective certified claims for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after the receipt of this decision. Id. at (f).

The protests are sustained in part and denied in part.

Susan A. Poling
General Counsel