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## Decision

**Matter of:** GiaCare and MedTrust JV, LLC

**File:** B-407966.4

**Date:** November 2, 2016

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### DIGEST

1. Protest that the agency failed to evaluate the realism of the awardee's pricing is sustained where the record does not show that the agency conducted a price realism analysis comparing the awardee's pricing with its proposed technical approach.
  2. Protest that the agency failed to evaluate the risk associated with the awardee's technical proposal is sustained where the record does not show that the agency considered the feasibility of the awardee's approach to recruit and retain staff at the required levels at its proposed burdened labor rates.
  3. Protest that the agency unreasonably evaluated the awardee's past performance is sustained where the agency concedes that the evaluation contains errors in the assignment of adjectival ratings.
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## DECISION

GiaCare and MedTrust JV, LLC (GiaMed),<sup>1</sup> of Fort Lauderdale, Florida, protests the award of a contract to Global Dynamics, LLC, of Columbia, Maryland, under request for proposals (RFP) No. W81K04-12-R-0025, issued by the Department of the Army for registered nursing services for the San Antonio Military Healthcare System. The protester challenges the agency's evaluation of its proposal and Global Dynamics' proposal.

We sustain the protest in part and deny it in part.

## BACKGROUND

The RFP, which was issued on September 14, 2012, contemplated the award of a fixed-price indefinite-quantity, indefinite-delivery (IDIQ) contract with a 5-year ordering period for the provision of registered nursing services in four service "areas."<sup>2</sup> Offerors were required to price and staff contract line item numbers (CLINs) for (1) regular full-time services, (2) health care provider pool services, and (3) overtime and holidays in each of the four service areas. RFP amend. 002, at 7-17.<sup>3</sup> Additionally, the RFP provided that the selected contractor would be required to perform a variety of administrative and management functions, such as, but not limited to, licensing verification, criminal background checks, providing profile application packets for each health care provider, and scheduling. Id. at 40-41, 42-43, 45-46. The contractor was also required to provide several key personnel, including a full-time program manager in the San Antonio area. Id. at 47. Finally, the solicitation set forth specific performance objectives that the contractor had to achieve to meet acceptable quality levels, including a relatively high 95 to 97 percent fill rate for a number of specialties, such as critical care, and an employee turnover rate of no more than 20 percent. Id. at 85.

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<sup>1</sup> GiaMed is an 8(a) mentor-protégé joint venture between GiaCare and MedTrust, LLC. Agency Report (AR), Tab 24, GiaMed Initial Technical Proposal, at 7.

<sup>2</sup> For example, area 1 included, among other nursing services, services in the family/primary care clinic, general surgery clinic, and vascular surgery clinic. RFP amend. 002, at 7. Area 2 included, among other services, bone marrow transplant unit/oncology, orthopedic inpatient, and post-partum. Id. at 10.

<sup>3</sup> Citations to pages in the record, including the RFP and its amendments, are to the Bates-numbered pages provided by the Army in its report responding to the protest.

The solicitation stated that award would be made to the offeror whose proposal represented the best value to the government. Proposals were to be evaluated on the basis of price and the following four non-price factors, in descending order of importance: (1) personnel methodology, (2) management capability, (3) staffing approach, and (4) past performance. RFP amend. 002, at 101-104. When combined, the non-price factors were significantly more important than price. Id. at 104.

The personnel methodology factor was comprised of three equally-weighted subfactors: (1) recruitment plan, (2) retention and employee relations plan, and (3) compensation plan. Id. at 101-102, 104. Under the recruitment plan subfactor, the Army was “to measure the offeror’s understanding of the requirements in terms of the offeror’s ability to recruit the quantity and type of qualified personnel needed to meet the requirements outlined in the [performance work statement (PWS)].” Id. at 102. Under the retention and employee relations plan subfactor, the Army was to “measure the offeror’s understanding of the requirements in terms of the offeror’s ability to retain the quantity and type of qualified personnel needed to meet the requirements outlined in the PWS[,]” as well as “the offeror’s approach in maintaining relations with [contract service providers].” Id. Finally, under the compensation plan subfactor, the Army was “to measure the offeror’s understanding of the requirements in terms of the offeror’s ability to provide adequate compensation and to ensure that the approach meets the requirements outlined in the PWS.” Id. Under the first three technical factors, including subfactors, proposals were to be rated as blue/outstanding, purple/good, green/acceptable, yellow/marginal, or red/unacceptable. Id.

Under the past performance factor, offerors were to submit references pertaining to contracts or subcontracts currently being performed or completed within the past three years that are similar to the size and complexity of the requirement solicited here. Id. at 88. Of relevance to GiaMed’s protest, the solicitation provided that “[t]he Government will consider past performance from all entities within a teaming arrangement (i.e., prime/subcontractor, joint venture, mentor-protégé, etc.), however past performance references are limited to 5 references per offeror.” Id. Under the past performance factor, proposals were to be rated as very relevant, relevant, somewhat relevant, or not relevant and then assigned a confidence rating of substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown/neutral confidence. Id. at 103.

Under the price factor, offerors were required to supply all cost elements used by the offeror to compute its proposed fully burdened hourly rates. Id. at 89. The solicitation listed examples of such elements that included, among other things, wages, taxes, paid time off, other direct costs, overhead, G&A, and profit. Id. Offerors were required to include a narrative containing the basis for each price element. Id. Price was to be evaluated by multiplying offerors’ fully burdened hourly rates for the services by estimated quantities set forth in the RFP. Id. at 104.

The RFP also stated that “pricing must be considered realistic and reasonable[]” and that the Army would “use price analysis, cost analysis, and cost realism techniques to evaluate an offeror’s proposed pricing.” Id.

Responses to the solicitation were due by October 16, 2012 and the contracting officer subsequently established a competitive range that initially did not include Global Dynamics.<sup>4</sup> Memorandum of Law (MOL) at 6. After a successful protest by Global Dynamics before our Office, see Global Dynamics, LLC, B-407966, May 6, 2013, 2013 CPD ¶ 118, the Army established a new competitive range, engaged in four rounds of discussions with offerors, and notified offerors on June 17, 2015, that an award had been made to Global Dynamics. MOL at 6-8.

On June 29, 2015, GiaMed filed a timely protest with our Office, raising many of the same grounds at issue here. We dismissed the protest after the Army notified us that it intended to take corrective action by performing a new price evaluation and issuing a new source selection decision. See GiaCare and MedTrust JV, LLC, B-407966.2, B-407966.3, Aug. 26, 2015 (unpublished decision).

Around this same time, on July 30, 2015, the Small Business Administration (SBA) denied a protest brought by GiaMed challenging Global Dynamics’ size status. SBA Size Determination Case No. 2-2015-50 (July 30, 2015). GiaMed appealed the SBA’s size determination, which was denied by the SBA on October 29, 2015. Size Appeal of GiaCare and MedTrust, JV, LLC, SBA No. SIZ-5690, 2015 SBA LEXIS 60 (Oct. 29, 2015).

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<sup>4</sup> The record reflects that the Army continued with its evaluation and “determined that a contract award would be made to GiaMed, which was considered to be the best value to the Government[.]” AR, Tab 40, Source Selection Decision Document (SSDD), at 5.

In June 2016, the Army completed its reevaluation and reaffirmed its prior award to Global Dynamics. The proposals submitted by Global Dynamics and GiaMed were evaluated as follows:

<b>Factors</b>	<b>Global Dynamics</b>	<b>GiaMed</b>
<b>Personnel Methodology</b>	Purple/Good	Purple/Good
<b>Recruitment Plan</b>	Green/Acceptable	Blue/Outstanding
<b>Retention &amp; Employee Relations Plan</b>	Purple/Good	Purple/Good
<b>Compensation Plan</b>	Purple/Good	Purple/Good
<b>Management Capability</b>	Purple/Good	Blue/Outstanding
<b>Staffing Approach</b>	Green/Acceptable	Purple/Good
<b>Past Performance</b>	Substantial Confidence	Substantial Confidence
<b>Price</b>	\$172,548,069	\$193,004,937

AR, Tab 40, Source Selection Decision Document (SSDD), at 14-15.

Under the technical factors, Army evaluators assigned five strengths to Global Dynamics' proposal and ten strengths, two of which were significant strengths, to GiaMed's proposal.<sup>5</sup> AR, Tab 38, Source Selection Advisory Council (SSAC) Report, at 16, 19. Although the Army assigned more strengths to GiaMed's proposal, the source selection authority ultimately concluded that the majority of the strengths identified for GiaMed are "very similar in nature and would impact recruitment and retention in ways similar to that of Global Dynamics." AR, Tab 40, SSDD, at 20. Under the past performance factor, the source selection authority stated that the two proposals were "equally rated, having receiv[ed] the highest past performance rating[.]" *Id.* at 25. Finally, under the price factor, the contracting officer explained that offerors' direct rates and fringe rates were [DELETED]. AR, Tab 37, Price Evaluation, at 6. In explaining the difference in price, the contracting officer states, "the difference in price is in play with the [DELETED], which vary widely[.]" *Id.*

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<sup>5</sup> Global Dynamics received two strengths for its retention and employee relations plan, one strength for its compensation plan, and two strengths under the management capability factor. AR, Tab 38, SSAC Report, at 6-7. GiaMed received one significant strength and one strength for its recruitment plan, two strengths for its retention and employee relations plan, two strengths for its compensation plan, one significant strength and one strength under the management capability factor, and two strengths under the staffing approach factor. *Id.* at 3-4.

In its source selection decision, the Army determined GiaMed to be “the highest rated proposal in the competitive range.” AR, Tab 40, SSDD, at 19. Despite this determination, the source selection authority concluded that “[t]he higher technical rating assigned to the GiaMed proposal is not worth the additional \$20 [million] premium in price.” AR, Tab 40, SSDD, at 27, 22. On June 28, the Army issued a pre-award notice identifying Global Dynamics as the apparent successful offeror. The Army provided GiaMed with a debriefing on July 18 and GiaMed filed the instant protest on July 25.

## DISCUSSION

GiaMed raises a number of allegations in its protest. First, GiaMed challenges the Army’s price realism analysis, alleging that the awardee proposed unrealistically low direct and indirect rates. Second, GiaMed challenges the Army’s technical evaluation, contending that the Army failed to consider the risk that Global Dynamics would not be able to deliver on its proposed technical approaches given its low direct and indirect rates and also that the Army improperly assigned Global Dynamics’ proposal undeserved strengths. Third, GiaMed challenges the Army’s past performance evaluation, claiming that the Army unreasonably overlooked Global Dynamics’ lack of experience and, instead, improperly credited Global Dynamics with the experience of its subcontractor. Fourth, GiaMed alleges that the awardee misrepresented the availability of key personnel and, thus, the Army should reject its proposal. Fifth, GiaMed contends that the Army erroneously concluded that Global Dynamics met the solicitation’s requirement to demonstrate financial capability. Sixth, GiaMed expresses dissatisfaction with the Army’s evaluation of GiaMed’s technical proposal and contends that the Army unequally evaluated offerors’ proposals. Finally, GiaMed alleges that the Army’s source selection decision is flawed. For the reasons discussed below, we sustain GiaMed’s protest.<sup>6</sup>

### Price Realism Evaluation

As its leading challenge, GiaMed contends that the Army’s price realism evaluation failed to take into account the risk presented by Global Dynamics’ unrealistically low price. Protest at 16-19. Specifically, with respect to Global Dynamics’ direct labor rates, GiaMed alleges that Global Dynamics proposed, in its technical proposal, to retain the incumbent workforce with rates above incumbent rates, but its price proposal indicated rates below those of the incumbent for [DELETED] labor categories. Id. at 16. GiaMed alleges that the Army failed to take this discrepancy into consideration when evaluating the realism of GDL’s price. Id. GiaMed also

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<sup>6</sup> Although we do not address every argument raised, we have considered them and find that, except as discussed herein, they provide no basis to sustain the protest.

alleges that the Army's comparison of offerors' direct labor rates was flawed because the Army used rates in its calculations that do not match the rates actually proposed by the offerors. Protester's Comments at 17.

With respect to Global Dynamics' indirect rate, GiaMed argues that the Army's realism evaluation was flawed because the Army (a) provided no reasonable explanation for disregarding its own prior rejection of Global Dynamics' low rate, (b) failed to consider the risks inherent in Global Dynamics' technical approach, and (c) relied on irrational and unsupported assumptions. Protest at 19-23; Protester's Comments at 7. Our review of the record leads us to conclude that the Army's price realism analysis was unreasonable and not adequately documented.

Where, as here, a solicitation contemplates the award of a fixed-price contract, or a fixed-price portion of a contract, an agency may provide, in the solicitation, for the use of a price realism analysis for the limited purpose of measuring an offeror's understanding of the requirements or to assess the risk inherent in an offeror's proposal.<sup>7</sup> Federal Acquisition Regulation (FAR) § 15.404-1(d)(3); Valor Healthcare, Inc., B-412960, B-412960.2, July 15, 2016, 2016 CPD ¶ 206 at 6; B&B Med. Servs., Inc.; Ed Medical, Inc., B-409705.7, B-409705.8, Dec. 8, 2015, 2016 CPD ¶ 4 at 6. The depth of an agency's evaluation in this regard is a matter within the sound exercise of the agency's discretion. B&B Med. Servs., Inc.; Ed Medical, Inc., *supra*, at 6-7; Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 4-5. An agency may use a variety of techniques within its realism evaluation, and there is no obligation in a price realism analysis to verify each and every element of an offeror's costs. DynCorp Int'l, LLC, B-412451, B-412451.2, Feb. 16, 2016, 2016 CPD ¶ 75 at 18-19 n.9; AMEC Programs, Inc.; Bechtel Nat'l, Inc., B-408708, B-408708.2, Dec. 4, 2013, 2014 CPD ¶ 50 at 9. In reviewing protests challenging price realism evaluations, we examine the record to determine whether the agency acted reasonably and in a manner consistent with the solicitation's requirements. B&B Med. Servs., Inc.; Ed Medical, Inc., *supra*, at 7; Smiths Detection, Inc.; Am. Sci. & Eng'g, Inc., B-402168.4 *et al.*, Feb. 9, 2011, 2011 CPD ¶ 39 at 17.

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<sup>7</sup> The agency agrees that "this solicitation required a price realism analysis to be conducted for the limited purpose of measuring offerors' understanding of the requirements or to assess the risk inherent in an offeror's proposal." Contracting Officer's Statement (COS) at 10. The agency further states, "[t]he solicitation stated that a cost realism analysis would be performed." *Id.* at 8.

In this case, the RFP did not simply indicate that the agency would perform a price analysis. Instead, the RFP required the following:

The offeror shall provide other than cost or pricing data which describes in sufficient detail and supports the elements that make up the total proposed ITEM NO pricing identified in Volume I – Administrative. This shall be in the form of a spreadsheet and shall include within each dollar value cell the actual calculation used to arrive at that proposed dollar value (i.e. the spreadsheet shall be populated with costs and formulas and not plugged amounts). The Government requires all cost elements used by the offeror to compute their proposed fully burdened hourly bill rates. Examples of price breakdown may include wages, payroll taxes, federal/state taxes, employer provided pension and insurance, worker’s compensation, paid time off, other direct costs, overhead, G&A, and profit, etc. Also, include a narrative containing the basis of each price element. Clearly specify which pricing detail relates to each defined period of performance.

RFP amend. 002, at 89. The RFP further provided that “pricing must be considered realistic and reasonable[.]” and that the agency “will use price analysis, cost analysis, and cost realism techniques to evaluate an offeror’s proposed pricing.” Id. at 104.

#### Direct Labor Rates

GiaMed alleges that the Army unreasonably failed to consider whether Global Dynamic’s proposed direct labor rates were sufficient to achieve its proposed technical approach. Protest at 19. In this regard, GiaMed contends that Global Dynamics, in its technical approach, proposed to retain [DELETED] percent of the incumbent workforce and to provide a [DELETED] percent raise across all incumbent rates. Protest at 18. However, as GiaMed demonstrates, Global Dynamics’ price proposal indicated rates below those of the incumbent for [DELETED] labor categories.<sup>8</sup> Id. at 18-19. GiaMed alleges that the Army failed to take this discrepancy into consideration when evaluating the realism of Global Dynamics’ price. Id.

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<sup>8</sup> The contemporaneous record does not include the incumbent’s labor rates. COS at 9; MOL at 16; Intervenor’s Comments at 13. Rather, the incumbent’s rates were supplied by GiaMed in its protest. Protest at 18-19 (chart listing incumbent MedTrust’s rates). In its filings, the agency does not contest the accuracy of the incumbent rates as represented by GiaMed. COS at 9; MOL at 15-16.

In response, the Army provides a detailed explanation of the methodology it used to determine that Global Dynamics' direct labor rates were at the mean of all offerors, and therefore, both competitive and realistic. MOL at 12-15. The Army explains that both Global Dynamics and GiaMed proposed direct labor rates that were at the mean of all offerors. COS at 8; MOL at 14; AR, Tab 37, Price Evaluation, at 14, 16. Accordingly, the Army argues that there is no significant difference between the two offerors and neither proposed unrealistically low or unbalanced direct labor rates. MOL at 14.

Despite the agency's reliance on a comparison of offerors' labor rates, such a comparison, by itself, is insufficient to determine whether the rates are realistic. Our cases in this area recognize that, as with cost realism analysis, an agency's assessment of price realism requires consideration of the offeror's technical approach. Solers Inc., B-409079, B-409079.2, Jan. 27, 2014, 2014 CPD ¶ 74 at 7; Lifecycle Constr. Servs., LLC, B-406907, Sept. 27, 2012, 2012 CPD ¶ 269 at 7 n.14. In this respect, our Office has held that the comparison of offerors' price proposals in the context of a price realism analysis is an inherently limited methodology given the requirement to consider each offeror's unique technical approach. See Health Net Fed. Servs., LLC, B-401652.3, B-401652.5, Nov. 4, 2009, 2009 CPD ¶ 220 at 21.

Here, the record contains no meaningful consideration of the compatibility of Global Dynamics' pricing with its proposed technical approach.<sup>9</sup> The evaluation record shows that the Army assigned a strength to Global Dynamics' technical proposal for its retention and employee relations plan for proposing an "additional [DELETED]% above incumbent employee rates dependent upon [DELETED]." AR, Tab 38, SSAC Report, at 7, 19. In assigning this strength to Global Dynamics' technical approach, the Army concluded that "[t]his augmentation should enhance the retention of incumbent employees who already have experience performing the services required by the solicitation and increase[] the probability of successful contract performance." Id. However, as GiaMed demonstrates, Protest at 18-19, Global Dynamics' proposed labor rates were below incumbent rates, thus negating the augmentation the Army concluded would increase the probability of successful contract performance. The contemporaneous record does not show that the Army considered this discrepancy.

Where an agency fails to document its price realism evaluation, it bears the risk that there may not be an adequate supporting rationale in the record for us to conclude that the agency had a reasonable basis for its source selection decision.

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<sup>9</sup> The price evaluation documentation does not discuss a single aspect of Global Dynamics' technical proposal and contains only conclusory references to the offeror's technical approach. See e.g., AR, Tab 37, Price Evaluation, at 5 ("The cost proposal reflects the offeror[']s technical approach."); id. at 17.

Valor Healthcare, Inc., *supra*, at 6. Here, the Army unreasonably failed to consider the degree to which Global Dynamics' proposed direct labor rates would enable it to implement the technical approach for which the Army assigned it a strength. *See id.* at 7 (sustaining protest challenging agency's price realism evaluation where the agency failed to consider risk associated with awardee's ability to hire a "majority" of incumbent employees at labor rates below incumbent rates); Gen. Dynamics One Source, LLC; Unisys Corp., B-400340.5, B-400340.6, Jan. 20, 2010, 2010 CPD ¶ 45 at 16-17 (sustaining protest challenging agency's price realism evaluation where the agency failed to evaluate awardee's ability to hire incumbent employees, as it proposed, given relatively low labor rates in its price proposal); Health Net Fed. Servs., LLC, *supra*, at 19-24 (sustaining protest challenging agency's price realism evaluation where the agency failed to reasonably assess whether awardee's plan to hire large percentages of incumbent workforce, which agency considered to be a beneficial approach, was realistic where awardee offered lower compensation rates); Magellan Health Servs., B-298912, Jan. 5, 2007, 2007 CPD ¶ 81 at 16-17 (sustaining protest challenging agency's cost realism evaluation where the agency failed to reasonably adjust awardee's costs based on its proposed approach to capture the incumbent workforce).<sup>10</sup>

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<sup>10</sup> In its post-protest filings, the Army argues that GiaMed misstates Global Dynamics' technical approach and the Army's interpretation of that approach. MOL at 15-16, 27. Quoting from Global Dynamics' proposal, the Army argues that Global Dynamics represented only that it is the firm's "goal" to retain [DELETED] percent of the incumbent workforce and that it "[DELETED]" offers a [DELETED] percent increase above incumbent rates contingent upon several criteria. *Id.* at 15 (quoting AR, Tab 18, Global Dynamics' Revised Proposal 2d Discussions, at 52, 53). Accordingly, the Army argues that it did not view Global Dynamics to be proposing to retain [DELETED] percent of the incumbent workforce or to provide a guaranteed [DELETED] percent increase across all labor categories. *Id.* at 15-16, 27. Although we find that Global Dynamics' proposal supports the agency's post-protest interpretation, nothing in the contemporaneous evaluation record supports, or even makes reference to, such an interpretation on behalf of the Army. Rather, as explained above, the Army evaluators assigned a strength to Global Dynamics' proposal because the Army viewed Global Dynamics to be proposing an "augmentation" that would "increase[] the probability of successful contract performance." AR, Tab 38, SSAC Report, at 7, 19. The Army cannot have it both ways--that is, it cannot assign a strength to Global Dynamics' proposal for the augmentation, but fail to consider whether the awardee proposed costs that would support the strength. Accordingly, we reject the Army's post-protest explanation. Kratos Def. & Rocket Support Servs., Inc., B-413143, B-413143.2, Aug. 23, 2016 CPD ¶ 227 at 6 (rejecting post-protest explanation of agency's interpretation of offeror's proposal where record does not support such an interpretation). Moreover, to the extent the Army now concedes that its assignment of a strength to the  
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Next, GiaMed argues that the Army's comparison of offerors' direct labor rates was flawed because the Army used labor rates in its calculation that do not match the rates actually proposed by the offerors. Protester's Comments at 17-19. As a result of these errors, GiaMed contends that all offerors' labor rates were compared against incorrectly calculated mean labor rates. Id. at 18. GiaMed further contends that, had the correct labor rates been used, Global Dynamics' rates would have been [DELETED] percent below the mean, rather than right at the mean, as determined by the Army. Id. See also AR, Tab 37, Price Evaluation, at 16-17. Moreover, GiaMed notes that the Army looked favorably on the fact that Global Dynamics proposed higher labor rates than GiaMed in the [DELETED] positions. Protester's Comments at 19. See also AR, Tab 37, Price Evaluation, at 17; COS at 8. Yet, using the correct values, GiaMed contends that Global Dynamics did not, in fact, propose higher rates in most of these categories. Protester's Comments at 19.

Our review of the record confirms GiaMed's allegations. Compare AR, Tab 37, Price Evaluation, at 21-22, with Tab 19, Global Dynamic's Price Proposal, at 43, 65; Tab 31, GiaMed's Price Proposal, at 332, 336, 368, 370, 373. Moreover, the record shows that the source selection authority relied upon the erroneous calculations in determining that there was no statistical difference between the direct labor rates of Global Dynamics and Gia Med. AR, Tab 40, SSDD, at 26-27 (finding that the two offerors "have virtually the same direct labor rates"). Accordingly, we sustain GiaMed's challenge to the agency's price realism evaluation on this basis as well.

#### Indirect Rates

GiaMed raises several challenges to the Army's evaluation of Global Dynamics' indirect rate. First, GiaMed contends that the Army's evaluation was unreasonable because the Army initially concluded that the awardee's indirect rate was unrealistic and then, without any explanation, reversed course and concluded that the indirect rate was realistic. Protest at 22; Protester's Comments at 12. In this respect, the record shows that Global Dynamics initially proposed a composite indirect rate of [DELETED] percent, which the Army found to be "unrealistically low." AR, Tab 37, Price Evaluation, at 13, 17; Tab 18, Global Dynamics' Revised Proposal 2d Discussions, at 7-8; COS at 10; MOL at 16. In a subsequent proposal revision, Global Dynamics increased its indirect rate to [DELETED] percent, which the Army determined to be realistic. AR, Tab 18, Global Dynamics' Revised Proposal 2d Discussions, at 7-8; Tab 21, Global Dynamics' Revised Proposal 4th Discussions, at 1. In its final proposal revision, however, "[i]n order to be as competitive as possible," Global Dynamics lowered its indirect rate to [DELETED] percent. Tab 21,

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awardee's proposal under this subfactor was an error, we recommend that it reconsider this aspect in any subsequent reevaluation.

Global Dynamics' Revised Proposal 4th Discussions, at 1. GiaMed alleges that “[n]o explanation has been provided as to why the Agency chose to reverse course and treat [Global Dynamics'] indirect rates as realistic after previously finding its formerly higher rates to be unrealistic.” Protest at 22.

The record does not support GiaMed's allegation. Rather, in its addendum to its price evaluation, which was drafted during the agency's corrective action, the Army expressly addressed this protest allegation.<sup>11</sup> AR, Tab 37, Price Evaluation, at 13. Thus, we do not agree with GiaMed's contention that acceptance of the final rate represented an unexplained reversal of course. However, as we explain below, we find the Army's evaluation of Global Dynamics' final indirect rate of [DELETED] percent to be otherwise unreasonable.

Apart from GiaMed's argument that the Army altered its position without any explanation, GiaMed contends that Global Dynamics' proposed indirect rate of [DELETED] percent is unrealistically low and creates a risk of poor performance. Protest at 16, 20-22; Protester's Comments at 7. GiaMed identifies a number of benefits and incentives in the awardee's technical proposal that GiaMed contends add up to significant costs--costs which Global Dynamics proposed to cover with its indirect rate. Protest at 5, 21, 26-27, 30. GiaMed contends, however, that Global Dynamics' unrealistically low indirect rate is insufficient to cover such costs. Id. at 20-21.

To support its argument, GiaMed points out that Global Dynamics' [DELETED] percent indirect rate for overhead, G&A, and profit was significantly lower than any other offeror, including more than [DELETED] percent lower than the incumbent's indirect rates,<sup>12</sup> and [DELETED] percent lower than the Army's independent government cost estimate (IGCE), which included only profit and G&A. Protest at 16. See also AR, Tab 40, SSDD, at 18-19. GiaMed also points out that Global Dynamics' overall price was \$45 million less than the IGCE. Protest at 16. See also AR, Tab 40, SSDD, at 18-19. GiaMed argues, therefore, that Global Dynamics “clearly did not understand the resources it would need to dedicate to successfully perform this effort, leading it to underestimate the indirect rates needed.” Protest

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<sup>11</sup> The Army explains that it initially believed that the [DELETED] percent rate “could represent an error.” AR, Tab 37, Price Evaluation, at 13. After receiving additional information from the awardee during discussions, the agency was able to confirm that the rate “was no error.” Id.

<sup>12</sup> GiaMed estimates that “[e]ven cutting G&A and overhead to the most basic level needed to perform the contract . . . such costs would easily exceed \$[DELETED] million a year[,]” which “represent[s] [DELETED] % of [Global Dynamics'] total annual price[.]” Protest at 21. According to GiaMed, Global Dynamics would be forced to operate at a loss. Id. at 21-22.

at 16. In any event, GiaMed alleges that the “Army either did not recognize the risk arising from unrealistically low indirect rates or it did not document its reasoning for ignoring such a risk.” Id. at 27.

In response, the Army defends its analysis by arguing that it reasonably used a “contribution margin calculation” to determine that Global Dynamics’ indirect rate was realistic.<sup>13</sup> MOL at 17-19; COS at 10. As we explain below, however, neither the record, nor the Army’s post-protest explanations, addresses whether such a method was appropriate in the context of the technical approach proposed by Global Dynamics.

The record reflects that Global Dynamics proposed a composite overhead, G&A, and profit rate of [DELETED] percent, which was the lowest of all offerors.<sup>14</sup> AR, Tab 37, Price Evaluation, at 17. In its price evaluation documentation, the Army concluded that, “from a contribution margin standpoint,” Global Dynamics’ “approach does make sense.”<sup>15</sup> Id. at 13. According to the Army, under a contribution margin approach, the awardee’s proposed price need only cover its direct costs because all other costs are fixed and would be incurred whether or not the awardee won the contract. Id. Because Global Dynamics proposed a total price of \$172,548,079, its composite indirect rate would amount to approximately \$[DELETED] million over the five year period of performance. Id. The Army concluded that this is “a substantial amount of dollars to cover above their direct costs and contribute to covering their fixed costs, thereby increasing their profit.” Id. The Army found that Global Dynamics “has supported their proposal in terms of dollars and not rates,” and found the [DELETED] percent rate “acceptable” because

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<sup>13</sup> The Army also argues that Global Dynamics’ “combined rate of [DELETED] % was only 1% different than another offeror in the competitive range.” MOL at 18 (citing AR, Tab 37, Price Evaluation, at 12). However, as GiaMed points out, this offeror’s proposed price was \$[DELETED], meaning that it would be able to dedicate approximately \$[DELETED] million to overhead, G&A, and profit. Protester’s Comments at 12 n.3. More importantly, however, as explained above, the comparison of offerors’ pricing, by itself, is of limited value given the requirement to consider each offeror’s unique technical approach. Health Net Fed. Servs., LLC, supra, at 21. There is no documentation in the record that the Army determined the two offerors’ technical approaches to be similar.

<sup>14</sup> As the source selection authority correctly notes, the solicitation did not prohibit proposing a composite rate. AR, Tab 40, SSDD, at 27.

<sup>15</sup> The source selection authority represents that the contribution margin approach “is a common approach in commercial pricing.” AR, Tab 40, SSDD, at 27. He explains that, “[a]s a company must cover their variable costs to remain solvent, any price above their fixed costs would result in increased profit for a company compared to not receiving the contract.” Id.

“the proposed rate is not in error and there is no indication that the proposed rate would be a hardship on the offeror.” Id. at 13.

The record further shows that the source selection authority relied on this reasoning, stating that “[t]his strategy by Global Dynamics is considered sound, as the majority of overhead and G&A are fixed costs, while direct labor is considered a variable cost.” AR, Tab 40, SSDD, at 27; COS at 10 (“As most of G&A and non-fringe overhead costs are fixed, this is a logical approach.”). The source selection authority further states, “[a]s it is assumed that Global [Dynamics] has covered their variable costs, the additional [\$(DELETED) million] for overhead/G&A and profit would increase the bottom line for Global Dynamics and therefore, the proposed rate is considered realistic.” Id.

GiaMed argues that the Army’s evaluation, as described, was premised upon a number of flawed assumptions. Most fundamentally, GiaMed explains that the Army’s reliance on a contribution margin approach is unreasonable because Global Dynamics did not justify its low indirect rate by explaining that it was using a contribution margin approach. Protester’s Comments at 9. GiaMed argues that the Army erroneously assumed that the only costs Global Dynamics would incur, besides direct labor costs, would be fixed costs that the offeror would incur even if it did not win the contract. Id. According to GiaMed, this is not the case and the Army would have known this had it considered Global Dynamics’ proposed technical approach in conjunction with its price realism evaluation. Id.

For instance, GiaMed explains that Global Dynamics proposed a multitude of resources, benefits, and strategies that carry costs that would not be incurred as direct labor costs. Id. at 10. Rather, the majority of these costs, which are directly attributable to the contract, are indirect costs that would have to be covered by the [DELETED] percent composite indirect rate.<sup>16</sup> Id. Moreover, according to GiaMed, because these costs scale with the quantity of registered nurses ordered by the Army, these costs are variable over the life of the contract. Id. As such, GiaMed concludes that the Army, in failing to consider the variable and fixed costs associated with Global Dynamics’ proposed approach that are specifically tied to

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<sup>16</sup> GiaMed provides numerous examples of such costs in its protest and comments. To provide a few representative examples, GiaMed alleges that Global Dynamics proposed a variety of benefits as part of its compensation plan that were explicitly incurred in its overhead costs. Protest at 26-27. For instance, Global Dynamics proposed to provide special incentives [DELETED], etc.--all covered by the awardee’s proposed overhead. Id. (citing AR, Tab 18, Global Dynamics’ Revised Proposal 2d Discussions, at 12, 47, 65, 69-70). In its retention and employee relations plan, Global Dynamics proposed other incentives, such as [DELETED], etc.--again all covered by the awardee’s proposed overhead. Id. at 33 (citing AR, Tab 18, Global Dynamics’ Revised Proposal 2d Discussions, at 69-70).

this contract, ignored the risk that the awardee would be unable to deliver key resources required for successful performance of the contract. Id. at 11.

We concur with GiaMed's arguments. Neither the contemporaneous record, nor the agency's post-protest explanations, point to anything in the awardee's proposal that would support the assumptions that "the majority of overhead and G&A are fixed costs" or that Global Dynamics "has covered their variable costs." AR, Tab 40, SSDD, at 27; COS at 10. Without such justification, we find it unreasonable for the Army to assume that Global Dynamics did not have variable costs (besides direct labor) tied to this contract such that the offeror would have \$[DELETED] million to attribute solely to fixed costs and profit. As we explained above, where an agency fails to document its analysis, it bears the risk that there may not be an adequate supporting rationale in the record for us to conclude that the agency had a reasonable basis for its decision. Valor Healthcare, Inc., supra, at 6. Here the basis for the Army's assumptions is undocumented and, therefore, we cannot conclude that its reliance on the contribution margin approach was reasonable. Solers, Inc., supra, at 8-9 (sustaining protest where record does not explain agency's assumptions).

#### Technical Evaluation

GiaMed alleges that the Army unreasonably assigned a rating of purple/good to Global Dynamics' technical proposal. Protest at 23. To assign a purple/good rating, the Army was required to determine not only that the proposal's strengths outweigh any weaknesses, but also that the proposal indicated a thorough approach and understanding of the requirements and a low risk of unsuccessful performance.<sup>17</sup> RFP amend. 002, at 102. In challenging the Army's technical evaluation GiaMed raises two central arguments: (1) that the Army failed to consider the risk that Global Dynamics would not be able to carry out its proposed technical approaches given its low direct and indirect rates and (2) that the Army improperly assigned Global Dynamics' proposal undeserved strengths. We sustain the protest on both grounds.

#### Failure to Consider Risk Associated with Proposed Prices

Related to its challenge to the Army's price evaluation, GiaMed claims that Global Dynamics' unrealistically low prices will severely limit the awardee's ability to deliver

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<sup>17</sup> For this reason, we reject the Army's repeated insistence that any risk that Global Dynamics will not be able to successfully perform due to its low direct and indirect rates is a matter of contract administration. MOL at 15 n.3, 22 n.5 (citing Baldt, Inc., B-278648, Feb. 23, 1998, 98-1 CPD ¶ 61). Our decision in Baldt, Inc. does not stand for the proposition that an agency is never required to consider the risk of unsuccessful performance in evaluating proposals.

on its proposed technical approach under all factors. See Protest at 24-28 (compensation plan), 29-30 (recruitment plan), 33-35 (retention and employee relations plan), 37-39 (management capability), 40-41 (staffing approach). More specifically, GiaMed claims that the inability to provide the proposed salaries and benefits creates a serious risk that Global Dynamics will not be able to recruit and retain the staff required at the levels set forth in the solicitation, e.g., 95 to 97 percent fill rate and maximum 20 percent turnover. Protest at 23, 27.

For the reasons discussed above, we sustain GiaMed's challenge in this respect. There is nothing in the record indicating that the Army's non-price evaluators considered the potential impact of Global Dynamics' direct or indirect rates on its ability to successfully perform the contract. In fact, with one exception, it does not appear that the technical evaluation team was provided with Global Dynamics' price proposal. See AR, Tab 34, Global Dynamics Technical Evaluation, at 1-11 (indicating that technical evaluation team was provided "applicable portions" of the pricing volume in order to evaluate the offerors' compensation plans (subfactor 1C). Thus, the technical evaluators had little-to-no information with which to evaluate the risk associated with the awardee's technical approach. In sum, as explained above, the record does not show that the Army reasonably considered the impact of Global Dynamics' low direct and indirect rates on its ability to successfully carry out all aspects of its technical approach and the risk associated with Global Dynamics' proposal in the event it was unable to do so.

#### Unsupported Strengths

Outside of the price realism context, GiaMed also contends that the Army credited Global Dynamics with undeserved strengths. We sustain two of these challenges. First, as discussed above, under the retention and employee relations plan subfactor (subfactor 1B), the Army assigned a strength to Global Dynamics' proposal for an "augmentation" of incumbent labor rates that the Army concluded "should enhance the retention of incumbent employees who already have experience performing the services required by the solicitation and increase[] the probability of successful contract performance." AR, Tab 38, SSAC Report, at 7. In its post-protest filings, the Army itself appears to concede that the assignment of this strength was not based upon an accurate reading of the awardee's proposal. MOL at 15-16, 27 (explaining that the awardee's proposal did not guarantee a [DELETED] percent increase in direct rates).

Second, under this same subfactor, the Army assigned Global Dynamics' proposal a strength for proposing to offer a "\$[DELETED] bonus [DELETED]." AR, Tab 38, SSAC Report, at 7, 19. The Army concludes that "[t]his should enhance retention and increase the probability of successful contract performance." Id. As GiaMed correctly notes, however, the Army has miscited the awardee's proposal, which indicates that Global Dynamics "may" pay a \$[DELETED] bonus [DELETED]. Protest at 32 (citing AR, Tab 18, Global Dynamics' Revised Proposal 2d

Discussions, at 33, 69). In its agency report, the agency does not substantively respond to this argument, stating only the contracting officer concurs that the strength was warranted. COS at 13.<sup>18</sup>

#### Past Performance Evaluation

GiaMed argues that the Army unreasonably assigned a rating of substantial confidence to Global Dynamic's past performance. Protest at 42-45. Specifically, GiaMed alleges that, in assigning this rating, the Army unreasonably "overlooked [Global Dynamics'] complete lack of experience, and credited [Global Dynamics] with the experience offered by its subcontractor[.]" Protest at 42. GiaMed also alleges that the references considered by the Army pertaining to Global Dynamics' subcontractor failed to meet the solicitation's criteria for relevancy and recency. Protest at 43. For the reasons discussed below, GiaMed's challenge is denied in part and sustained in part.

An agency's evaluation of past performance, which includes its consideration of the relevance, scope, and significance of an offeror's performance history, is a matter of discretion that we will not disturb unless the agency's assessments are unreasonable, inconsistent with the solicitation criteria, or undocumented. Science Applications Int'l Corp., B-413112, B-413112.2, Aug. 17, 2016, 2016 CPD ¶ 240 at 6. The evaluation of experience and past performance, by its very nature, is subjective; we will not substitute our judgment for reasonably based evaluation ratings, and an offeror's disagreement with an agency's evaluation judgments, without more, does not demonstrate that those judgments are unreasonable. Id.

The record reflects that Global Dynamics submitted five past performance references: one reference pertaining to its own past performance and four references pertaining to its subcontractor's past performance. AR, Tab 32, Past Performance Report, at 12. The Army determined that the reference submitted for

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<sup>18</sup> Under the recruitment plan subfactor, GiaMed contends that the awardee's proposal contained numerous contradictions regarding the San Antonio nursing market, which demonstrate an inadequate understanding of the requirement and merited a weakness. Protest at 28-29; Protester's Comments at 23-24. GiaMed argues that the Army's analysis of the awardee's proposal under this subfactor was cursory and did not consider the contradictions evident on the face of the awardee's proposal. Id. The contemporaneous record does not indicate whether the Army considered the contradictions in evaluating the awardee's recruitment plan. AR, Tab 34, Global Dynamics Technical Evaluation, at 2-3. Moreover, the Army's post-protest filings do not substantively address this issue. See COS at 12; MOL at 24. Because the record is unclear as to whether the Army considered these contradictions, we recommend that the Army document this issue, as appropriate, when implementing the corrective action recommended below.

Global Dynamics did not meet the solicitation's criteria for relevancy and, therefore, did not consider the reference in its past performance evaluation. *Id.* at 13. Accordingly, the Army's evaluation of Global Dynamics' proposal under the past performance factor was based entirely upon the efforts of Global Dynamics' subcontractor--a fact undisputed by the parties. MOL at 35 (“[T]he Army *did not rely* on [Global Dynamics'] experience as a prime[.]”); Protest at 43; Intervenor's Comments at 30.

It is also undisputed that the solicitation permitted the Army to consider the past performance of an offeror's subcontractor. Protest at 43 (“[T]he Solicitation permitted offerors to use their subcontractor's past performance efforts[.]”); MOL at 33; Intervenor's Comments at 29. In this regard, the solicitation stated that “[t]he Government will consider past performance from all entities within a teaming arrangement (i.e., prime/subcontractor, joint venture, mentor-protégé, etc.), however past performance references are limited to 5 references per offeror.” RFP amend. 002, at 88. However, GiaMed argues that, although the solicitation permitted the consideration of a subcontractor's past performance efforts, the solicitation “did not state the Agency would weigh these references equally with references submitted by a prime contractor.” Protest at 43. GiaMed also argues that the solicitation did not “state that offerors need not have any past performance of their own, so long as a subcontractor had such experience.” *Id.* at 43-44. To rely entirely upon the experience of a subcontractor is, in GiaMed's opinion, “nonsensical” and unreasonable. *Id.* at 44.

We have previously held that the past performance of a proposed subcontractor properly may be considered in evaluating an offeror's past performance where it is not expressly prohibited by the solicitation. *Science Applications Int'l Corp.*, *supra*, at 6; *AMTIS-Advantage, LLC*, B-411623, B-411623.2, Sept. 16, 2015, 2015 CPD ¶ 360 at 8; *Hughes Grp. Solutions*, B-408781.2, Mar. 5, 2014, 2014 CPD ¶ 91 at 7. Thus, we find nothing improper in the Army's reliance upon the past performance of Global Dynamics' subcontractor.

Moreover, we find nothing objectionable in the Army's decision to rely entirely upon the past performance of Global Dynamics' subcontractor in assigning a confidence rating to this proposal under the past performance evaluation factor. Contrary to GiaMed's contentions, the solicitation permitted consideration of a subcontractor's past performance without restriction. In this regard, the solicitation did not require the proffered past performance to relate to the experience of the principal offeror. Nor did it require the Army to afford more weight to the past performance of the principal offeror. Rather, the agency had ample discretion to consider the experience of Global Dynamics' subcontractor and to rely exclusively upon that experience in assigning a confidence rating to Global Dynamics' past performance.

In circumstances where the solicitation does not prohibit such consideration, the significance of, and the weight to be assigned to, a subcontractor's experience is a

matter of agency discretion. Belzon, Inc., B-404416 et al., Feb. 9, 2011, 2011 CPD ¶ 40 at 7. In factually analogous cases, we have held that an agency may assign a confidence rating to an offeror based exclusively upon the past performance of a subcontractor. Hughes Grp. Solutions, supra, at 6-7 (denying protest where agency assigned a substantial confidence rating to an offeror based entirely upon the single relevant past performance reference of a subcontractor); Roca Mgmt. Educ. & Training, Inc., B-293067, Jan. 15, 2004, 2004 CPD ¶ 28 at 4-5 (denying protest where agency assigned confidence rating to an offeror based entirely upon three relevant past performance references of a subcontractor). Thus, we find no basis upon which to find unreasonable the Army's decision to rely upon the past performance of Global Dynamics' subcontractor.<sup>19</sup>

As explained above, GiaMed contends, in the alternative, that the past performance references of Global Dynamics' subcontractor did not support a rating of substantial confidence. Protest at 43. The record reflects that the Army's assignment of this rating was based upon one reference obtained by the Army from the Past Performance Information Retrieval System (PPIRS) and one reference submitted by Global Dynamics--both references relating to Global Dynamics' subcontractor.<sup>20</sup> AR, Tab 32, Past Performance Report, at 12-13; Tab 33, Global Dynamics' References, at 1-4, 11-14. GiaMed alleges that the two references failed to meet the solicitation's criteria for relevancy and/or recency. Protest at 43.

Although we do not provide a detailed explanation here, we find unobjectionable the Army's determination that the PPIRS reference was "very relevant" and performed with the solicitation's recency criteria. With respect to the reference submitted by Global Dynamics, although the agency initially determined this project to be relevant, AR, Tab 32, Past Performance Report, at 13, the Army now concedes that this reference "should have been rated as not relevant." COS at 17. Thus, the

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<sup>19</sup> We further note that GiaMed cannot demonstrate any prejudice resulting from the Army's decision to rely exclusively on the past performance of an entity other than the principal offeror because the Army similarly evaluated GiaMed's past performance. The record shows that GiaMed's confidence rating was based entirely upon the past performance of its large business joint venturer, MedTrust, LLC, as the Army determined that neither GiaMed (the principal offeror) nor GiaCare (the small business joint venturer) possessed any relevant or recent experience. AR, Tab 32, Past Performance Report, at 16. In fact, the Army found that GiaMed's proposal did not include any past performance information for the joint venture itself. Id. Accordingly, although GiaMed complains that Global Dynamics "has no relevant experience of its own[.]" Protester's Comments at 35, GiaMed finds itself similarly situated having no relevant experience of its own.

<sup>20</sup> Of the four references submitted by Global Dynamics pertaining to projects performed by its subcontractor, the Army received only one completed past performance questionnaire (PPQ). AR, Tab 32, Past Performance Report, at 13.

Army acknowledges that the awardee's overall past performance rating of substantial confidence was based, in part, on an erroneous assignment of adjectival ratings.

The Army contends, however, that its assignment of a rating of substantial confidence is justified based upon the PPIRS reference alone. Id. In essence, the Army contends that evaluators would have reached the same conclusion had this error been corrected. The protester contends that the Army's conclusion is "manifestly unreasonable" and that, without the benefit of the additional reference, the awardee's single PPIRS report does not justify the same confidence rating as GiaMed's "robust past performance record." Protester's Comments at 34-35.

To the extent that the Army contends that it would have reached the same conclusion with respect to the awardee's past performance assessment, we do not believe that the protest process is the appropriate mechanism for conducting a thorough and fair redetermination. Computer World Servs. Corp., B-410513, B-410513.2, Dec. 31, 2014, 2015 CPD ¶ 21 at 4. In this regard, we give little weight to revised evaluations made during the heat of litigation. See AT&T Govt. Solutions, Inc., B-413012; B-413012.2, July 28, 2016, 2016 CPD ¶ 237 at 20; Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15.

Here, the record does not show that evaluators were aware of the error--nor could they have been since it appears that the Army's new contracting officer recently reached this decision based upon his own assessment of the record.<sup>21</sup> More importantly, despite the Army's claims that evaluators would have assigned the same substantial confidence rating had the record reflected the correct relevance rating for the reference, there is no representation to this effect in the record. Thus, we conclude that the Army argument represents a revised evaluation made during the heat of litigation. See AT&T Govt. Solutions, Inc., supra, at 14-21 (rejecting argument that error in past performance evaluation was not prejudicial because evaluators would have assigned the same rating); Systems Made Simple, Inc., B-412948.2, July 20, 2016, 2016 CPD ¶ 207 at 4 (rejecting post hoc price/technical tradeoff that was not part of the contemporaneous award determination).

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<sup>21</sup> The contracting officer's statement indicates that he took over for the procuring contracting officer on May 27, 2016. COS at 3.

## Competitive Prejudice

Prejudice is an element of every viable protest. Valor Healthcare, Inc., supra, at 8. Here, the record shows that the agency did not perform or document a reasonable price realism evaluation, technical evaluation, or past performance evaluation of the awardee's proposal, as required by the solicitation. There is no basis for our Office to know what the source selection might have been had the errors not occurred. In such circumstances, we resolve doubts regarding prejudice in favor of the protester because a reasonable possibility of prejudice is a sufficient basis for sustaining a protest. Id.; Celta Servs., Inc., B-411835, B-411835.2, Nov. 2, 2015, 2015 CPD ¶ 362 at 12. We, therefore, conclude that there is a reasonable possibility that GiaMed was prejudiced by the agency's actions.

## RECOMMENDATION

For the reasons discussed above, we conclude that the Army's evaluation of the awardee's price, technical proposal, and past performance was unreasonable. We further conclude that GiaMed was prejudiced by this evaluation. We recommend that the Army conduct and document a new evaluation of the awardee's proposal and prepare a new source selection decision. We also recommend that the agency reimburse the protester's reasonable costs associated with filing and pursuing its protest, including attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d). The protester's 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. 4 C.F.R. § 21.8(f).

The protest is sustained in part and denied in part.

Susan A. Poling  
General Counsel