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Decision

Matter of: Innovative Technologies Corporation

File: B-401689; B-401689.2; B-401689.3

Date: November 9, 2009

Robert Guy Hanseman, Esq., and James Alan Dyer, Esq., Sebaly, Shilliot + Dyer, for the protester.

John S. Pachter, Esq., Jonathan D. Shaffer, Esq., Mary Pat Gregory, Esq., and Andrew J. Foti, Esq., Smith Pachter McWhorter PLC, for Tybrin Corporation, an intervenor.

Sharon A. Jenks, Esq., and Behn M. Kelly, Esq., Department of the Air Force, for the agency.

Nora K. Adkins, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest of alleged improprieties apparent on face of task order solicitation, filed after issuance of the task order, is dismissed as untimely under GAO's Bid Protest Regulations.
 2. Protest that the agency unreasonably evaluated the competitors' proposals, based primarily on the agency's alleged failure to sufficiently credit the protester's incumbent status and advantages, is denied where the record shows the agency evaluation was reasonable and in accordance with the stated evaluation criteria.
 3. Alleged misrepresentations by vendor that was issued the task order were not material where the agency did not rely upon them.
 4. Nature and extent of agency's price realism analysis, including proposed labor rates, of proposals responding to fixed-price task order solicitations are matters within the reasonable exercise of the agency's discretion
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DECISION

Innovative Technologies Corporation (ITC) of Dayton, Ohio protests the issuance of task order No. 38 under the Department of the Air Force's Consolidated Acquisition of Professional Services (CAPS) multiple-award indefinite-delivery/indefinite-

quantity (ID/IQ) contract to Tybrin Corporation of Fort Walton Beach, Florida, under request for proposals (RFP) No. FA8622-06-D-8599-0099, for advisory and assistance services to support the 312th Aeronautical Systems Wing, 912th Aeronautical Systems Group (AESG) located at Wright-Patterson Air Force Base, Ohio. ITC alleges that the RFP was inconsistent with the terms of the CAPS contract; that the start date for performance of the task order was improperly modified; that the agency conducted an unreasonable evaluation of mission capability, past performance and price; and that the agency relied on material misrepresentations in Tybrin's proposal in evaluating its technical capability; and that the agency's best-value decision was unreasonable.

We deny the protest.

The advisory and assistance services solicited by the RFP for the 312th Aeronautical Systems Wing, 912th AESG consist of providing various qualified personnel with a wide range of skills, including logistics, management, engineering, and administrative support, required for the capabilities, acquisition, development, production and sustainment of the F-15 aircraft and related subsystems.

The RFP for the current task order was issued on April 19, 2009 as a follow-on task order under the Air Force's CAPS contract.¹ All nine eligible CAPS contractors received the RFP, which requested proposals for the issuance of a firm fixed-price, time-and-materials hybrid task order with a base period of performance of 7 months with 2 option years. "Award" was to be made on a best-value basis after an integrated assessment of the evaluation factors. The RFP listed the evaluation factors in descending order of importance as follows:

- Factor 1 – Mission Capability
 - Subfactor 1: Technical Capability/Risk
 - Subfactor 2: Schedule/Risk
- Factor 2 – Past Performance
- Factor 3 – Price/Cost

RFP at 15. The combined weight of the mission capability and past performance factors was said to be significantly more important than price/cost, although the RFP also noted that price/cost would contribute substantially to the award decision. Id.

With regard to the mission capability subfactors, the RFP stated:

¹ The CAPS ID/IQ contracts were awarded to acquire non-personal manpower support in the form of advisory and assistance services for the period of April 20, 2006 to April 19, 2011. Contracting Officer's Statement at 1.

Technical Capability/Risk:

The offeror shall demonstrate their ability to provide qualified individuals meeting the education and experience requirements for the proposed labor category/skill level. . . . by submitting either the Individual Contractor Personnel Capabilities Statements [CPCS] or Corporate [CPCSs]; or a combination of the Individual and Corporate [CPCSs]; and possessing the capabilities required by the 312th Aeronautical Systems Wing, 912th Aeronautical Systems Group PWS [performance work statement]. . . . Proposals based on Corporate [CPCSs] may be assigned a higher Mission Capability risk subfactor than proposals based on Individual [CPCSs].

Schedule/Risk:

The offeror shall submit a Transition Plan to demonstrate their ability to provide qualified individuals on the first work day of the period of performance and address their approach to recruit and/or retain qualified individuals utilizing either the Individual [CPCSs] (with or without letters of intent) or Corporate [CPCSs]; or a combination of the Individual and Corporate [CPCSs]. . . . Proposals based on Corporate [CPCSs] may be assigned a higher Mission Capability risk subfactor than proposals based on Individual [CPCSs].

RFP at 16-17. The RFP stated that mission capability subfactors would be based on the following color system: blue (exceptional), green (acceptable), yellow (marginal), and red (unacceptable). RFP at 16. Mission capability risk for both subfactors was to be evaluated using the following rating system: low risk, moderate risk, high risk, and unacceptable risk. RFP at 18.

The past performance factor evaluation under the RFP was to be based on an assessment of the agency's confidence in the offeror's ability to fulfill the solicitation requirements while meeting schedule, budget, and performance quality constraints as they relate to the mission capability and cost/price factors. Based on this evaluation, each offeror received an integrated performance confidence assessment of either substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence. RFP at 18, 21.

Price/cost was to be evaluated to determine if the proposed prices were reasonable and realistic. RFP at 16.

Three offerors holding CAPS contracts, including ITC and Tybrin, submitted proposals by April 30, 2009--the closing date for receipt of initial proposals. Agency Report (AR), vol. 5, Tab 22, Source Selection Decision, at 2. Amendment 3 was issued to the RFP on June 10, concurrent with the opening of discussions with all offerors. This amendment was issued primarily to change the period of performance

start date from July 1, 2009 to August 1, 2009, and to specify a transition period of 10 work days from the start date of the period of performance, by the end of which period the contractor was required to provide necessary personnel.² RFP amend. 3, at 5.

After opening discussions and issuing evaluation notices, the agency received final proposal revisions on July 19. The source selection evaluation team (SSET) evaluated ITC's and Tybrin's final revised proposals and rated them both green with low risk for both subfactors of the mission capability factor. No strengths were identified for either the proposals of ITC or Tybrin under the mission capability factor or subfactor. AR, vol. 5, Tab 11, ITC's Mission Capability Evaluation, at 1-2; Tab 14, Tybrin's Mission Capability Evaluation, at 1-2. Past performance was evaluated by the agency's Performance Confidence Assessment Group (PCAG). The PCAG, as part of its evaluation, reviewed the references provided by the offerors as well as the Past Performance Information Retrieval System (PPIRS) and questionnaires. The PCAG evaluated ITC's and Tybrin's past performance as substantial confidence. AR, vol. 5, Tab 16, PCAG Assessment, at 8, 14. ITC's and Tybrin's price/cost proposals were evaluated by the contracting officer and were both determined to be reasonable and realistic with Tybrin having an total evaluated price (TEP) of \$19,771,643 and ITC a TEP of \$21,516,288. AR, vol. 5, Tab 19, Price Competition Memorandum, at 1, 4-5.

On July 22, the SSET presented the decision briefing to the source selection authority (SSA) and recommended award to Tybrin, based upon ITC's and Tybrin's equivalent evaluations and Tybrin's low price. The SSA concurred with the SSET's recommendation and award was made to Tybrin on July 27. ITC protested to our Office on July 31.

The Federal Acquisition Streamlining Act of 1994 (FASA) provided that our Office was authorized to consider task order protests only under limited circumstances, stating:

A protest is not authorized in connection with the issuance or proposed issuance of a task or delivery order except for a protest on the ground that the order increases the scope, period, or maximum value of the contract under which the order is issued.

10 U.S.C. § 2304c(d) (2006). Our Office's authority to consider task order protests under FASA was expanded by section 843 of the National Defense Authorization Act of Fiscal Year 2008 (NDAA), Pub. L. 110-181, 122 Stat. 3, 236-39 (2008), to also

² The original RFP required offerors to submit a transition plan as part of their proposals to demonstrate their ability to provide qualified individuals on the first work day of the period of performance. RFP amend. 3, at 5.

provide for our Office's consideration of "a protest of an order valued in excess of \$10,000,000." 10 U.S.C.A. § 2304c(e)(B) (2009).

ITC first argues that the mission capability subfactors of the RFP improperly allowed for the submission of corporate CPCs as well as individual CPCs in the task order proposals. The protester asserts that this was beyond the scope of the CAPS contract in that it is inconsistent with clause HO24 of the CAPS contract, which assertedly did not provide for the submission of corporate CPCs for proposals submitted in response to task order solicitations, but only allowed individual CPCs to be submitted in response to such solicitations. ITC claims that by this action the agency provided an unfair competitive advantage to non-incumbent contractors of the task order work, such as Tybrin, and effectively removed ITC's advantage as the incumbent, given that ITC was the only firm that had the capability to submit individual CPCs, with letters of intent, with its task order proposal.

Clause HO24 of the CAPS contract states in pertinent part that each proposal for a task order "shall include . . . [CPCs] which provide availability, qualifications, experience, and training of personnel to perform customers task order requirements and meet the requirements of the CAPS Labor Category description." CAPS Contract Clause H024. The CAPS contract goes no further in explaining the contents of a CPC.

As a matter of background, upon issuing its first task order solicitations under the CAPS contract, the agency interpreted the HO24 requirement for CPCs to mean that an offeror was required to provide resumes for the specific individuals proposed to perform under the task order, that is, individual CPCs. In June 2006, the agency further required signed letters of intent for incumbent personnel proposed for task orders. The agency, however, after a review of the effects of this policy, determined that this guidance appeared to unduly favor incumbent contractors of task order work. Thereafter, in January 2008, the agency changed its guidance to allow the use of corporate CPCs and transition plans in task order proposals. Corporate CPCs are supposed to describe the company's plan for identifying and providing appropriately qualified personnel, and the related transition plan explains how the offeror intends to convince the right people to work for the company in the performance of the task order and how the company will ensure that they will be timely available. At that time, the agency held a technical interchange meeting with the CAPS contractors at which it explained that it would allow the use of corporate CPCs and transition plans in task order proposals, and provided guidance as to what a corporate CPC should address. Agency Report at 5-7.

ITC's second argument also focuses on the terms of the RFP. ITC alleges that the agency's addition of a 10-day period for transition activities by Amendment 3 improperly modified the start date for performance of the task order. Much like its earlier argument, ITC claims that the 10-day period gives an unfair competitive advantage to non-incumbent contractors since the agency is effectively taking away

ITC's alleged strength of being the only contractor capable of providing a workforce on day one of the task order's period of performance.

The agency requests that the first two grounds of protest be dismissed as untimely because they concern alleged solicitation improprieties that were required to be protested prior to the due date for receipt of proposals (for the corporate CPCS issue) or due date for final revised proposals (for the transition plan changes added by Amendment 3) in order to be considered timely under our Bid Protest Regulations. 4 C.F.R. § 21.2(a)(1) (2009). The protester concedes that the bases for its protest of the allowance of corporate CPCSs was apparent from the face of the task order solicitation and that the changes to the transition plan requirements included in the solicitation were apparent from the face of Amendment 3, and that it did not protest these alleged solicitation improprieties in this RFP prior to the respective due dates for receipt of proposals or final revised proposals.³ The protester nevertheless claims that these protest grounds are not untimely filed because ITC was not authorized to protest the task order solicitation or award under the terms of 10 U.S.C.A. § 2304c(e)(B) (quoted above) until an order exceeding \$10 million was actually issued, which occurred here on July 27, 2009.

In the context of the Competition in Contract Act of 1984 (CICA), 31 U.S.C. § 3551(1) (2006), FASA, and our Office's well-established practices and procedures employed to implement the protest jurisdiction conferred by those statutes, we view section 843 of the NDAA authorization to consider "a protest of an order valued in excess of \$10,000,000" as providing the same substantive protest jurisdiction conferred by CICA and FASA. Bay Area Travel, Inc. et al., B-400442 et al., Nov. 5, 2008, 2009 CPD ¶ 65 at 8-9; Triple Canopy, Inc., B-310566.4, Oct. 30, 2008, 2008 CPD ¶ 207 at 5-7. Consistent with this Office's past practice and CICA's provisions that define a protest as "a written objection by an interested party to . . . [a] solicitation or other request by a Federal agency for offers for a contract for the procurement of property or services," we view the NDAA's authorization for our Office to consider protests of task orders in excess of \$10 million as extending to protests objecting to the terms of the task order solicitation. See Bay Area Travel, Inc. et al., supra, at 9. Thus, our bid protest regulations including our timeliness requirements, such as those pertaining to apparent solicitation improprieties, are applicable to task order protests. Triple Canopy, Inc., supra, at 7.

ITC knew or should have known upon receipt and review of the RFP that the task order would be issued for an amount in excess of \$10 million, given that it was the incumbent contractor, its initial proposal was almost \$[REDACTED] million, and the

³ While ITC references an "informal protest" regarding allowing corporate CPCSs that it made to Air Force made in January 2008 prior to the technical interchange meeting held with the CAPS contractors (discussed above), this cannot be construed to be an agency-level of this RFP that had not yet been issued.

government provided within the RFP itself a description of the level of effort required including the number of individuals and number of labor hours from which any of the CAPS contractors should have been able to calculate that the resultant task order would be valued well in excess of \$10 million. *Cf. Delex Sys, Inc.*, B-400321, et al., Aug. 5, 2008, 2008 CPD ¶ 154 at 2-3 (GAO declined jurisdiction of a protest of the terms of task order solicitations where there was no dispute that the value of the anticipated delivery orders was less than \$10 million). Accordingly, these ITC challenges to alleged solicitation improprieties are untimely filed under our Bid Protest Regulations and will not be considered.⁴

The remainder of ITC's protest challenges the agency's evaluation of proposals under the mission capability, past performance, and price/cost evaluation factors. The evaluation of proposals is a matter within the discretion of the contracting agency, and in reviewing protests against allegedly improper evaluations it is not our role to reevaluate proposals. *Kellogg Brown & Root Servs., Inc.*, B-400614.3, Feb. 10, 2009, 2009 CPD ¶ 50 at 4. Rather, our Office examines the record to determine whether the agency's judgment was reasonable, in accord with the evaluation factors set forth in the solicitation, and whether the agency treated offerors equally in its evaluation of their respective proposals and did not disparately evaluate proposals with respect to the same requirements. *Id.* A protester's mere disagreement with the agency's judgment does not render the evaluation unreasonable. *Id.* As discussed below, we find the agency's evaluation of the proposals to be reasonable and in accordance with the solicitation evaluation criteria.⁵

With regard to the mission capability factor evaluation, ITC asserts that the agency "failed to note significant strengths that ITC possesses, which should have resulted in 'Blue' ratings for both Mission Capability Subfactors," primarily because "ITC was

⁴ ITC notes that our regulations permit us to consider an untimely protest "for good cause shown" or where we determine that a protest raises issues significant to the protest system. 4 C.F.R. § 21.2(c). The "good cause" exception is limited to circumstances where some compelling reason beyond the protester's control prevents the protester from filing a timely protest. *Dontas Painting Co.*, B-226797, May 6, 1987, 87-1 CPD ¶ 484 at 2. The significant issue exception is limited to untimely protests that raise issues of widespread interest to the procurement community, and which have not been considered on the merits in a prior decision. *Schleicher Cmty. Corrs. Ctr., Inc.*, B-270499.3 et al., Apr. 18, 1996, 96-1 CPD ¶ 192 at 7. Here, the "good cause" exception has no application and there is nothing in the record to suggest that the issues raised are of widespread interest to the procurement community (beyond the holders of CAPS contracts) that would warrant their resolution in the context of an otherwise untimely protest.

⁵ While we have reviewed all of the challenges raised by ITC in its initial and supplemental protests, we will only discuss below the major challenges. None of the challenges provide a basis for sustaining the protests.

the only offeror who could deliver a highly competent workforce with years of directly relevant F-15 experience on the first day of the performance period.” Protest at 1-2, 20. ITC also argues that Tybrin’s proposal should have been considered inferior to ITC’s because Tybrin could not commit to provide the incumbent personnel.

Under the technical capability subfactor of the mission capability factor, the agency assigned a green/low risk rating to ITC’s proposal. Although the agency did not assign ITC’s proposal any strengths under this subfactor, the agency acknowledged that ITC submitted individual CPCSSs for all positions identified in the requirement and as the incumbent it “would only need to hire a small number of individuals to fill vacant positions.” AR, vol. 5, Tab 20, Proposal Analysis Report, at 9.

The agency also rated Tybrin’s proposal green/low risk with no strengths under the technical capability subfactor. The agency found that Tybrin’s approach that provided that its “first option is to hire the majority of the incumbent workforce . . . [and it would] fill any remaining vacancies with fully qualified personnel” met the RFP’s standards for a green/low risk rating. *Id.* at 11. The agency further recognized that Tybrin’s “submittal of Individual [CPCSSs] for all positions minimizes risks by providing a large pool of alternate candidates to replace incumbent personnel in the event some of the incumbents are not available and provides information on potential candidates to be assigned to the new effort.” *Id.* The agency found that this “two-prong approach” of recruiting the incumbents and providing a pool of qualified alternative employees was an acceptable, low risk means of demonstrating its ability to provide qualified individuals meeting the education and experience requirements for the proposed labor category/skill level. Supp. AR at 4-5. Furthermore, the agency believed that Tybrin’s provision of a qualified pool of numerous identified additional candidates all described in individual CPCSSs mitigated any potential risk. *Id.*

We find that the agency reasonably evaluated the proposals based upon the RFP evaluation criteria and assigned ratings based on the standards set forth in the solicitation. ITC argues that it should have received more credit and a higher rating under this subfactor because it was the incumbent and would more certainly provide the incumbent personnel. However, ITC’s disagreement with the agency’s decision to not assign a higher rating than was given Tybrin’s proposal under this subfactor by reason of ITC’s incumbent status and ITC’s ability to provide the incumbent personnel does not provide a basis for finding the agency’s rating was unreasonable, particularly given the low risk approach reasonably found in Tybrin’s proposal under this subfactor. See Madison Research Corp., B-295716, Apr. 25, 2005, 2005 CPD ¶ 95 at 7-8; Modern Techs. Corp., et al., B-278695, et al., Mar. 4, 1998, 98-1 CPD ¶ 81 at 7.

Both proposals also received a green/low risk ratings under the schedule subfactor with no strengths. The agency noted that “ITC’s incumbent workforce will transition seamlessly to the new period of performance.” AR, vol. 5, Tab 20, Proposal Analysis Report, at 9. The agency noted that Tybrin’s transition plan demonstrated its ability

to provide qualified individuals within 10 work days from the start date of the period of performance, as evidenced by the numerous individual CPCs provided in its proposal, and demonstrated an adequate approach to recruit and/or retain qualified individuals. Id. at 12.

ITC argues that it should have received a strength under this subfactor because of its ability to provide the incumbent workforce on day one of performance. The agency explains that it would give all offerors 10 days to transition and that there was no significant benefit to ITC's offered ability to begin performance on day one. This was in part due to the procedures of badging, or re-badging in the case of incumbent, employees; a process which the agency has stated takes about 10 days. Therefore, the agency did not assign a strength to ITC's promise to provide employees on day one because, as the agency explains, not even the incumbent employees would be able to perform their full tasks under the contract on day one due to re-badging and other administrative procedures. Supp. AR, Evaluator's Statement of Facts, at 11. While here too ITC disagrees with the agency's judgment, it has not shown the agency's failure to give ITC's proposal a strength under this subfactor or to assign its proposal a higher rating than Tybrin's was unreasonable or inconsistent with the RFP evaluation scheme.

ITC nevertheless argues that the agency misevaluated Tybrin's proposal as green/low risk under the mission capability subfactors because the evaluators mistakenly concluded that Tybrin submitted individual CPCs when in fact Tybrin's proposal actually included corporate, not individual, CPCs. Thus, ITC argues that Tybrin's proposal should have been assessed a high risk rating under these subfactors, given the RFP's admonition that "[p]roposals based on Corporate [CPCs] may be assigned a higher Mission Capability risk subfactor than proposals based on Individual [CPCs]." RFP at 17.

However, there is no factual basis for ITC's argument that Tybrin's proposal only included corporate CPCs. The solicitation defined Individual CPCs as "[a] brief description of each proposed employee's educational, professional qualifications, and experience for this work effort" and Corporate CPCs as "[d]escribes the offeror's plan and process to identify qualified personnel for this work effort." RFP at 15. Our review of Tybrin's proposal indicates that the CPCs contained individuals' names, education, work experience and qualifications, matched up to the personnel positions required by the RFP. AR, vol. 4, Tab 1, Tybrin's Proposal, at 108-697. Thus, we find the agency reasonably found that Tybrin's CPCs were individual CPCs rather than corporate CPCs.

ITC's protest also asserts that the agency evaluation under the mission capability factor was further flawed due to the agency's reliance on Tybrin's material misrepresentations included in its proposal. ITC claims that Tybrin falsely asserted that if awarded the contract, it would offer [REDACTED]. ITC references a [REDACTED] included in Tybrin's proposal that provides a [REDACTED]. For

example, [REDACTED]. ITC also points to other areas of Tybrin's offer to demonstrate alleged Tybrin's misrepresentations of its salaries and benefits, such as:

[REDACTED]

Id. at 56.

In support of its assertions, ITC provided an affidavit from a member of ITC's management that spoke to ITC's salary and benefits and pointed out various alleged inaccuracies in Tybrin's [REDACTED]. Second Supplemental Protest, attach. 1. In response, Tybrin likewise submitted its own declaration from a company official stating that the information contained in Tybrin's offer was not a misrepresentation but rather an accurate representation of [REDACTED] benefit offerings based upon the personal recollection of [REDACTED], information available in the public realm, information received during discussions, job interviews with former ITC employees, and other market research. Tybrin Response to Second Supplemental Protest at 12, attach. 1.

An offeror's material misrepresentation in its proposal can provide a basis for disqualification of the proposal and cancellation of a contract award based upon the proposal. A misrepresentation is material where the agency relied upon it and it likely had a significant impact on the evaluation. Optical Sys. Tech., Inc. B-296516.2, B-296516.3, Mar. 17, 2006, 2006 CPD ¶ 63 at 9.

Here, we need not consider whether the disputed statements regarding salary and benefits constitute misrepresentations, since we agree with the agency that there is no basis in the record for finding that the agency relied upon the statements such that they had a significant impact on the evaluation. As detailed above, the agency determined Tybrin's two-prong approach of attempting to recruit the incumbents and providing a large pool of qualified alternative employees was an acceptable means of demonstrating its ability to provide qualified individuals meeting the education and experience requirements for the proposed labor category/skill level. As noted by the agency, there is no suggestion that the SSET relied on or even considered the allegedly erroneous [REDACTED] provided in Tybrin's proposal in evaluating its mission capability. The evaluation documentation included in the record concerning the evaluation of Tybrin's proposal under the mission capability factor is simply devoid of any reference to, let alone credit for, providing the reference to its ability to offer [REDACTED]. See Optical Sys. Tech., *supra*, at 9 (no basis in the record for finding that the agency relied upon the statements regarding awardee's past performance such that they had a significant impact on the agency's evaluation of the awardee as low risk); *cf.* Johnson Controls Sec. Sys., B-296490, B-296490.2, Aug. 29, 2005, 2007 CPD ¶ 102 at 7-8 (final technical evaluation report gave offer and 8-point increase due to reliance on offerors misrepresentation that it had coordinated certification training plans with vendor representatives); Aerospace Design & Fabrication, Inc., B-278896.2, *et al.*, May 4, 1998, 98-1 CPD ¶ 139 at 8-9 (proposal given a strength for misrepresented highly qualified key personnel).

Because there is no evidence that the agency relied upon or considered the alleged misrepresentations included in Tybrin's [REDACTED] salaries and benefits [REDACTED], we do not consider such misstatements [REDACTED] to be material. Thus, this provides no basis to sustain ITC's protest.

With regard to past performance, ITC asserts that it was the only offeror who could reasonably provide assurance that essentially all of the highly qualified incumbent employees would report for work on the first day of the contract period. Thus, it argues that only ITC, not any other offeror, could receive a substantial confidence rating.

In assessing both ITC's and Tybrin's past performance, the agency reviewed the offerors' three relevant contracts (and/or task orders) as well as contracts in the PPIRS database. The offerors' contracts received both a relevancy and performance rating as they relate to the RFP's evaluation factors of technical capability, schedule and price/cost, which were combined for an overall confidence assessment.

The evaluation of ITC's past performance was well documented and was based upon four past performance efforts. This evaluation resulted in the following ratings:

ITC	Technical Capability		Schedule		Price/Cost	
	Relevance ⁶	Rating ⁷	Relevance	Rating	Relevance	Rating
Effort #1	[REDACTED]					
Effort #2	[REDACTED]					
Effort #3	[REDACTED]					
Effort #4	[REDACTED]					
	Substantial Confidence					

AR, vol. 5, Tab 16, Past Performance Assessment, at 8.

The evaluation of Tybrin's past performance was also well documented and was based upon three past performance efforts. This resulted in the following ratings:

⁶ [REDACTED]

⁷ [REDACTED]

Tybrin	Technical Capability		Schedule		Price/Cost	
	Relevance	Rating	Relevance	Rating	Relevance	Rating
Effort #1	[REDACTED]					
Effort #2	[REDACTED]					
Effort #3	[REDACTED]					
	Substantial Confidence					

Id. at 14.

Our review of the record finds the agency has reasonably justified the offerors' substantial confidence past performance ratings. In this regard, the record demonstrates that the agency took into account the relevance and performance of each contract referenced in the offerors' proposals as part of its evaluation and expressly concluded that each offeror's past performance merited a substantial confidence rating. While it appears that the underlying past performance ratings indicate that ITC's past performance may have been somewhat superior to Tybrin's, we find unpersuasive the protester's suggestion that its past performance as the incumbent contractor performing similar requirements should have necessarily resulted in ITC receiving a higher past performance rating than Tybrin. See America's Pride, B-401114, May 27, 2009, 2009 CPD ¶ 116 at 3; Modern Techs. Corp; et al., B-278695, et al., Mar. 4, 1998, 98-1 CPD ¶ 81 at 7.

ITC also asserts that Tybrin's proposed price as unreasonable and unrealistic, given that it was approximately 8 percent less than ITC's proposed price. ITC claims that, as the incumbent, its "current costs are the most-relevant indication of what a contractor must pay for the highly-qualified personnel necessary to meet the F-15 program's needs." Protest at 21-22.

In general, there is no requirement that a price realism analysis be performed when award of a fixed-price contract is contemplated. Phoebe Putney Mem'l Hosp., B-311385, June 19, 2008, 2008 CPD ¶ 128 at 2. However, a solicitation for a fixed-price contract may provide for a price realism analysis for the purpose of assessing offerors' understanding of the requirements or the risk inherent in offerors' proposals. PHP Healthcare Corp., B-251933, May 13, 1993, 93-1 CPD ¶ 381 at 5. The nature and extent of a price realism analysis ultimately are matters within the exercise of the agency's discretion, and our review of such an evaluation is limited to determining whether it was reasonable and consistent with the solicitation's evaluation criteria. Northrop Grumman Info. Tech., Inc., et al., B-295526 et al., Mar. 16, 2005, 2005 CPD ¶ 45 at 19.

The agency provided in the RFP that price proposals would be evaluated for reasonableness and realism. For a price to be reasonable the RFP stated that "it must represent a price to the government that a prudent person would pay when

consideration is given to prices in the market.” RFP at 21. The RFP further explained that “[r]ealism means that the prices in an offeror’s proposal are realistic for the work to be performed, reflect a clear understanding of the requirements, and are consistent with the offeror’s technical proposal.” *Id.* The solicitation did not provide that the Air Force would engage in any specific method of price or cost analysis.

In performing its price evaluation, the agency chose to first determine whether the offeror had proposed in accordance with the Government’s estimate or had proposed an alternative approach. All three offerors were found to have proposed in accordance with the labor categories, number of personnel in each category, number of labor hours, and the travel costs set forth in the solicitation. The agency then compared the labor rates proposed by each offeror for the task order to that offeror’s labor rates in its CAPS contract, and found that each offeror’s proposed labor rates for the task order were equal to or less than the labor rates proposed on the basic contract.⁸ AR, vol. 5, Tab 19, Price Competition Memorandum, at 5. While ITC asserts that the analysis of Tybrin’s proposed labor rates should have been more extensive, the agency found that since all offerors proposed to the Government’s Estimated Contractor Labor Support and the proposed rates were equal or less than the maximum rates in their CAPS contracts, a more extensive and detailed analysis of the proposed labor rates was not necessary. Supp. AR at 9. As stated above, the depth of an agency’s price analysis is a matter within the sound exercise of the agency’s discretion; we find no solicitation or legal requirement for the agency to have done a more in-depth analysis than was undertaken here. See Robinson’s Lawn Servs., Inc., B-299551.5, June 30, 2008, 2009 CPD ¶ 45 at 5-6.

The agency also calculated the TEP for each proposal by adding the government estimated travel costs to the proposed prices for the base and option years, and compared each offerors’ TEP to the independent government estimate and the TEPs of the other offerors. Based upon the foregoing analyses, the contracting officer determined that adequate price competition existed for the requirement and found each offeror’s proposed pricing was reasonable and realistic for the work to be performed, reflected a clear understanding of the requirements, and was consistent with the offeror’s technical proposals. AR, vol. 5, Tab 19, Price Competition Memorandum, at 5. We have no basis to question this determination. See Pemco Aeroplex, Inc., B-310372.3, June 13, 2008, 2008 CPD ¶ 126 at 8 (protest challenging price realism evaluation of fixed-price proposals was denied where protester failed to demonstrate that agency’s actions, inactions, or analyses were inconsistent with the terms of the solicitation).

⁸ Each CAPS contractor’s maximum labor rates were analyzed during the agency’s multiple award ID/IQ CAPS contract procurement in 2006 and found to be fair and reasonable.

Finally, ITC alleges that the agency's best value analysis was unreasonable. The agency's best-value analysis considered the ratings and the evaluators' assessments that lead to the ratings prior to making a decision. While the proposals of ITC and Tybrin were not identical, the agency determined that the two proposals were comparable and did not find a basis upon which to discriminate between them. Both proposals' price was determined to be reasonable and realistic but Tybrin's price at \$19,771,642.70 was approximately 8 percent lower than the price proposed by ITC. Between the two comparable proposals, the agency selected Tybrin's lowest price proposal. AR, vol. 5, Tab 22, Source Selection Decision Document, at 10-11. In a negotiated procurement with a best value evaluation methodology, where selection officials reasonably regard proposals as being essentially equal technically, price properly may become the determining factor in making award, notwithstanding that the solicitation assigned price less importance than technical factors. DIT-MCO Int'l Corp., B-311403, June 18, 2008, 2008 CPD ¶ 127 at 3-4. We find the agency's best-value decision was reasonable and consistent with the RFP's evaluation scheme.

The protest is denied.

Lynn H. Gibson
Acting General Counsel