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## Decision

**Matter of:** Concurrent Technologies Corporation

**File:** B-412795.2; B-412795.3

**Date:** January 17, 2017

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Jonathan L. Kang, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest challenging the agency's waiver of organizational conflicts of interest is denied where the waiver was consistent with the requirements of the Federal Acquisition Regulation (FAR).
2. Protest challenging the agency's conclusion that the awardee did not violate the Procurement Integrity Act is denied where the investigation was consistent with the requirements of the FAR.
3. Protest challenging the agency's affirmative determination of responsibility for the awardee is denied where the record does not show that the contracting officer failed to consider relevant, available information.
4. Protest challenging the evaluation of the offerors' technical proposals is denied where the evaluation was reasonable and consistent with the solicitation.
5. Protest challenging the agency's cost realism evaluation is denied where the evaluation reasonably addressed each offerors' unique technical approach.
6. Protest challenging the award decision is denied where the record shows that the agency reasonably concluded that the protester's higher-rated proposal did not merit the associated cost premium.

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## DECISION

Concurrent Technologies Corporation (CTC), of Johnstown, Pennsylvania, protests the award of a contract to Advanced Technology International d/b/a SCRA Applied R&D (ATI), of Summerville, South Carolina, under solicitation No. N00014-15-R-0005, which was issued by the Department of the Navy, Office of Naval Research (ONR), for services in support of the Navy Manufacturing Technology Metalworking Center of Excellence (NMC). CTC argues that the award to ATI was improper because the Navy failed to reasonably evaluate organizational conflicts of interest (OCIs) which should have disqualified the awardee; the agency conducted an inadequate investigation of alleged violations of the Procurement Integrity Act (PIA); the agency unreasonably found ATI to be a responsible offeror; the agency unreasonably evaluated the offerors' technical and cost proposals; and the source selection decision was inconsistent with the solicitation's best-value award criteria.

We deny the protest.

## BACKGROUND

The Department of Defense Manufacturing Technology Program, which is authorized under 10 U.S.C. § 2501(a), is intended to facilitate the development and application of advanced manufacturing technologies and processes. Statement of Work at 2. The NMC supports this program by developing metalworking or related manufacturing technologies and deploying them in U.S. shipyards and other relevant industry, with the goal of facilitating industry improvements and ultimately reducing the cost and time required to build and repair naval ships and other key naval platforms. Id. at 3. The Navy issued the RFP here on August 12, 2015, seeking proposals to provide management, administration, and technical oversight services for the NMC. CTC and its predecessor entities have performed the work supporting the NMC through grants, cooperative agreements, and contracts since approximately 1987. Contracting Officer's Statement/Memorandum of Law (COS/MOL) at 6.

The solicitation anticipated the award of a single indefinite-delivery, indefinite-quantity contract with a term of 5 years. RFP at 4, 6. Orders will be issued on a cost-plus-fixed-fee, cost (no fee), and cost share basis. Id. at 6. The maximum value of the contract is \$99 million. Id. at 7. Proposals were to be evaluated based on cost, and the following six non-cost factors: (1) center of excellence operations and management and business operations; (2) project development and management; (3) past performance; (4) key personnel and staffing; (5) facilities; and (6) cost share. Id. at 46. Non-cost evaluation factors 1 and 2 were of equal importance and each was more important than any of the remaining non-cost factors; factors 3 and 4 were of equal value, and each was more important than factors 5 or 6; factor 5 was more important than factor 6. Id. Offerors were to propose costs based on the statements of work for delivery/task orders 0001 and

0002, and the proposed costs were to be evaluated for reasonableness, realism, and completeness. Id. at 48. For purposes of award, the non-cost factors were “significantly more important” than cost. Id. at 46.

The Navy received proposals from two offerors, CTC and ATI, by the initial closing date of September 16, 2015. On February 9, 2016, the agency awarded the contract to ATI. CTC filed a protest with our Office challenging the award to ATI on February 26, arguing that ATI had an OCI relating to its access to proprietary CTC information, ATI was not a responsible offeror, the agency unreasonably evaluated ATI’s proposed costs, and the agency unreasonably concluded that the offerors’ technical proposals were equal--which resulted in an improper award to the lower-cost offeror. Prior to the time for filing its report in response to the protest, the Navy advised our Office that it would take corrective action. We dismissed the protest as academic on March 21.

As part of the corrective action, the Navy issued RFP amendment 3, which required offerors to submit a statement addressing any actual or potential OCIs or personal conflicts of interest (PCIs). RFP amend. 3 at 2-4. The RFP amendment also required offerors to certify that there were no changes to their cost or technical proposals. The agency reviewed the offerors’ OCI statements and conducted a new evaluation of the proposals. As discussed in detail below, the contracting officer concluded that there were no OCIs or PCIs that barred award to CTC or ATI, but also requested that the agency’s head of the contracting activity (HCA) waive the applicability of OCI rules for the procurement. The HCA approved the request prior to the award of the contract.

The final evaluation of the proposals was as follows:

	CTC	ATI
Center of Excellence Operations and Management and Business Operations	Good	Good
Project Development and Management	Outstanding	Good
Past Performance	Very Relevant/ Substantial Confidence	Very Relevant/ Substantial Confidence
Key Personnel and Staffing	Outstanding	Good
Facilities	Good	Good
Cost Share	Good	Good
Evaluated Cost	\$14,920,613	\$13,235,061

Agency Report (AR), Attach. Q, Source Selection Decision Document (SSDD), at 3-4.

As discussed in detail below, the source selection authority (SSA) concluded that CTC's proposal was more highly-rated under the non-cost evaluation factors, particularly the project development and management factor, and the key personnel and staffing factor. Id. at 17. Nonetheless, the SSA concluded that the advantages of CTC's proposal did not merit a cost premium of \$1.6 million over ATI's proposal. Id. The Navy awarded the contract to ATI on September 30, and provided a debriefing to CTC which concluded on October 11. This protest followed.

## DISCUSSION

CTC argues that the Navy's award of the contract to ATI was improper for six primary reasons: (1) the agency unreasonably evaluated potential OCIs concerning ATI's role as a contractor providing procurement support services; (2) the agency's review of CTC's allegations that ATI violated the PIA did not comply with procedural requirements; (3) the contracting officer unreasonably concluded that ATI was a responsible offeror; (4) the agency unreasonably evaluated the offerors' technical proposals; (5) the agency unreasonably evaluated the realism of the offerors' proposed costs; and (6) the agency's award decision ignored the advantages of CTC's higher-rated technical proposal and improperly made award on a lowest-priced, technically-acceptable basis.<sup>1</sup> For the reasons discussed below, we find no basis to sustain the protest.<sup>2</sup>

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<sup>1</sup> CTC also argues that ATI unreasonably refused to enter into a subcontract with the protester for performance of certain requirements of the solicitation. The protester argues that the awardee's proposal "specifically assured the Navy in its technical proposal that, if ATI received the award, CTC would be enlisted as a subcontractor." Protester's Comments (Dec. 19, 2016) at 6. The protester argues that, as of December 19, the awardee had refused to offer the protester a subcontract, and that the refusal to do so demonstrates that the awardee's proposal contained a material misrepresentation. Although the protester was provided a copy of the awardee's proposal on October 31, the protester did not file its challenge regarding this matter until December 19. Even allowing for reasonable inquiry by the protester, there is no basis to conclude that the protest is timely in light of the 49-day delay in filing. See 4 C.F.R. § 21.2(a)(2). In any event, the record does not support the protester's argument that the awardee specifically stated that it would offer a subcontract to CTC. ATI's proposal stated that the awardee intended to work with CTC "to smoothly transition the NMCOE leadership." AR, Attach. H, ATI Technical Proposal, Vol. I, at ES-3; see also id. at 10 (upon award, "a cooperative plan with CTC will be initiated to smoothly transition NMC activities as needed."). The awardee also stated that "[i]t is our intention to utilize CTC's metals experts and equipment as additional 'available technical resources' if they are amenable," and that the awardee would "welcome the opportunity to continue to work with them." Id. at ES-3. None of these statements reflect an intent to rely upon CTC as a subcontractor, nor do they assign CTC a specific role upon  
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## Organizational Conflicts of Interest

CTC argues that the award to ATI was tainted by OCIs arising from its role providing procurement support services for government agencies, including the Department of Defense. For the reasons discussed below, we conclude that there is no basis to sustain the protest because the appropriate agency official waived all actual or potential conflicts of interest.

The Federal Acquisition Regulation (FAR) requires that contracting officials avoid, neutralize, or mitigate potential significant conflicts of interest so as to prevent an unfair competitive advantage or the existence of conflicting roles that might impair a contractor's objectivity. FAR §§ 9.504(a), 9.505. The situations in which OCIs arise, as described in FAR subpart 9.5 and the decisions of our Office, can be broadly categorized into three groups: (1) biased ground rules; (2) unequal access to information; and (3) impaired objectivity. A biased ground rules OCI arises where a firm, as part of its performance of a government contract, has in some sense set the ground rules for the competition for another government contract. FAR §§ 9.505-1, 9.505-2. In these cases, the primary concern is that the firm could skew the competition, whether intentionally or not, in favor of itself. Energy Sys. Grp., B-402324, Feb. 26, 2010, 2010 CPD ¶ 73 at 4. An unequal access to information OCI exists where a firm has access to nonpublic information as part of its performance of a government contract, and where that information may provide the firm an unfair competitive advantage in a later competition for a government contract. FAR §§ 9.505(b), 9.505-4; Cyberdata Techs., Inc., B-411070 et al., May 1, 2015, 2015 CPD ¶ 150 at 6. An impaired objectivity conflict arises where a firm's ability to render impartial advice to the government would be undermined by the firm's competing interests. FAR § 9.505-3; PURVIS Sys., Inc., B-293807.3, B-293807.4, Aug. 16, 2004, 2004 CPD ¶ 177 at 7. The FAR also provides that an agency head or designee, not below the level of the HCA, may, as an alternative to avoiding, neutralizing, or mitigating an OCI, execute a waiver determining that application of the FAR's OCI provisions in a particular circumstance is not in the

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which the awardee's proposal depends. Thus, there is no factual predicate for the protester's argument that the awardee's proposal contained a material misrepresentation as to its intent to enter into a subcontract with CTC. We therefore also conclude that this protest ground fails to state a valid basis. 4 C.F.R. §§ 21.1(c)(4), (f).

<sup>2</sup> Although this decision does not address every issue raised by CTC, we have reviewed all of the protester's arguments and find that none provide a basis to sustain the protest.

government's interest. FAR § 9.503; AT&T Gov't Solutions, Inc., B-407720, B-407720.2, Jan. 30, 2013, 2013 CPD ¶ 45 at 4.

CTC's protest of the initial award (B-412795) argued that ATI had an unequal access to information OCI arising from its role as a procurement support contractor for the government through which the awardee received CTC's proprietary information. Protest (B-412795) at 23. As discussed above, the Navy took corrective action in response to CTC's protest by, among other things, amending the solicitation to require offerors to disclose actual or potential OCIs or PCIs. COS/MOL at 10. The offerors submitted revised proposals, including statements regarding their actual or potential OCIs and PCIs. Id. at 11.

The contracting officer reviewed the offerors' OCI statements and concluded that neither had a disqualifying OCI. With regard to ATI, the contracting officer noted that the awardee identified [DELETED] contracts or other agreements (including agreements under other transaction authority) where the awardee believed there were actual or potential OCIs. AR, Attach. AA, OCI Investigation Report, at 15-16. The contracting officer concluded that although ATI's role under an other transaction agreement for the Navy National Shipbuilding Research Program provided it with access to CTC proprietary information, this information did not give ATI an unfair competitive advantage under this solicitation. Id. at 25. Similarly, the contracting officer found that although CTC's role under an other transaction agreement for the Department of Defense Ordnance Technology Consortium provided the awardee access to CTC proposal information, ATI and CTC entered into a nondisclosure agreement which, along with ATI's internal procedures and safeguards, avoided an OCI. Id. at 27-29.

Notwithstanding these conclusions, the contracting officer also determined it was in the best interest of the government to seek a waiver of any potential OCIs from the HCA, per the provisions of FAR § 9.503. Id. at 66. On August 24, the HCA executed the waiver, stating that he had reviewed the contracting officer's OCI investigation report, and concluded that it was in the government's interest to waive the application of any OCI rules for the procurement. AR, Attach. AF, First OCI Waiver (Aug. 24, 2016), at 1. The Navy reaffirmed the award to ATI on September 29.

On October 12, CTC filed the instant protest (B-412795.2) challenging the award to ATI. Although CTC's initial protest raised challenges relating only to an unequal access to information OCI, the protester's current protest argues that the award to ATI was also tainted based on biased ground rules and impaired objectivity OCIs. Protest (B-412795.2) at 30-32. The protester characterizes these additional two types of OCIs as giving rise to a "biased advice" conflict, based on conflicts that would arise under ATI's performance of the [DELETED] contracts identified in the awardee's OCI statement. The protester, in effect, argues that the contracting officer was obligated to consider whether ATI's work on the other contracts where

the awardee provides procurement support to the government would be compromised because ATI will now be biased against CTC because ATI had competed with CTC for award of the contract challenged here.<sup>3</sup> See id. The protester also argues that the waiver of the OCIs by the HCA was ineffective because it was not reasonable, and because it did not address the biased advice arguments.

On October 25, the Navy requested that we dismiss CTC's OCI allegations as academic based on the HCA's waiver of the OCIs. After receiving briefing from the protester and intervenor, we declined to dismiss the protest because it challenged the adequacy of the waiver. GAO Email (Nov. 3, 2016). We advised, however, that our review would be limited to the scope of the waiver and whether it clearly addressed all of the allegations raised by the protester. Id.

On November 7, the HCA issued a supplemental OCI waiver. The HCA stated that he concluded that "it is not in the Government's interest to apply such OCI rules and procedures to any, each, every, and all actual, potential, or alleged [OCI's] that do or might exist under [the solicitation] for the Navy Manufacturing Technology (ManTech) Metalworking Center (NMC) of Excellence." AR, Attach. AJ, Second OCI Waiver (Nov. 7, 2016) at 1. The HCA explained that he "fully considered the risks associated with waiving [the] OCI here as well as CTC's allegations," specifically those raised in CTC's first and second protests. Id. The HCA therefore "approve[d] the Contracting Officer's request for a waiver of those OCI rules and procedures, and do hereby waive each and every one of them for this NMC solicitation and contract." Id.

As our Office held in AT&T Government Solutions, we will dismiss a protest alleging an OCI where the HCA waives the alleged conflict. AT&T Gov't Solutions, supra, at 4. In that decision, however, we also noted that a protester may separately challenge an agency's waiver of an OCI. Id. at n.4. We therefore address CTC's argument that the waiver did not address the protester's OCI allegations, and was also unreasonable.

The second OCI waiver shows that the HCA considered all of the allegations raised by the protester. In this regard, the HCA specifically cited the following: (1) the contracting officer's OCI waiver request setting forth the extent of the conflict;

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<sup>3</sup> The Navy argues that CTC's challenge regarding the "biased advice" OCIs was untimely, and also fails to state a valid basis to the extent that the type of conflict described by the protester was not a matter that the contracting officer was required to consider as part of her OCI analysis. Because, as discussed herein, the agency waived all potential OCIs, including any potential OCIs arising from CTC's allegations, we need not address the agency's other arguments.

(2) the contracting officer's August 2016 OCI investigation report; and (3) CTC's "allegations in GAO Bid Protest B-412795.2 alleging [that] ATI had an OCI stemming not only from ATI's alleged unequal access but also from ATI's alleged biased ground rules and impaired objectivity in administrating the Defense Ordnance Technology Consortium (DOTC) and other Defense Department research consortia." AR, Attach. AJ, Second OCI Waiver (Nov. 7, 2016) at 1. On this record, we conclude that the HCA's second waiver clearly addressed all of the allegations raised by CTC.

Next, CTC argues that the OCI waiver was not reasonable because the record does not demonstrate that the HCA gave adequate consideration to the full record. The FAR requires requests for OCI waivers to be in writing, to set forth the extent of the conflict, and to be approved by the appropriate agency official. FAR § 9.503. As our Office has held, waivers of OCIs must be consistent with, and reasonably supported by, the record. Department of the Navy--Recon., B-286194.7, May 29, 2002, 2002 CPD ¶ 76 at 14. We find no basis to conclude that the Navy acted unreasonably here because the record shows that the agency complied with the requirements of FAR § 9.503--specifically, the waiver request and approval described the OCIs being waived, and the waiver was approved by the HCA. See Science Applications Int'l Corp.--Costs, B-410760.5, Nov. 24, 2015, 2015 CPD ¶ 370 at 5. On this record, we find no basis to sustain CTC's arguments that award to ATI was improper based on the protester's OCI allegations.

#### Procurement Integrity Act Investigation

Next, CTC argues that the Navy's PIA investigation failed to comply with the procedural requirements set forth in FAR subpart 3.1. For the reasons discussed below, we find no basis to sustain the protest.

The procurement integrity provisions of the Office of Federal Procurement Policy Act, as amended, 41 U.S.C. §§ 2101-2107, known as the Procurement Integrity Act, provide, among other things, that a federal government official "shall not knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates." 41 U.S.C. § 2102(a)(1). Additionally, as relevant here, the PIA provides that "[e]xcept as provided by law, a person shall not knowingly obtain contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates." Id. § 2102(b). Subpart 3.1 of the FAR sets forth the requirements for an agency to investigate allegations raised regarding potential violations of the PIA.

CTC's protest challenging the current award (B-412795.2) initially argued that the Navy failed to investigate whether ATI's access to CTC information violated the PIA. Protest (B-412795.2) at 35. On October 25, the Navy requested that we dismiss this argument as untimely because it was based on the same information raised in



CTC's OCI allegations in the prior protest, but was not timely filed. Agency Request for Dismissal (Oct. 25, 2016) at 1-2.

On November 3, we granted the Navy's request and dismissed the PIA argument. GAO Email (Nov. 3, 2016). We concluded that the protester's PIA arguments relied upon the same facts as its OCI arguments, and that the protester therefore should have raised its PIA arguments in connection with its initial protest in February 2016. Id. We noted that our Bid Protest Regulations also state that we "will not review an alleged violation of [the PIA] where the protester failed to report the information it believed constituted evidence of the offense to the Federal agency responsible for the procurement within 14 days after the protester first discovered the possible violation." Bid Protest Regulations, 4 C.F.R. § 21.5(d).

In addition to dismissing this protest argument, however, we noted that it appeared from the record that the Navy nonetheless conducted an investigation of the PIA allegations. On October 31, the agency provided the documents relevant to its report responding to the protest, including the agency's PIA investigation, which was completed by the contracting officer prior to the current award. AR, Attach. AG, PIA Investigation Report. On November 10, CTC filed a supplemental protest arguing that the Navy's PIA investigation failed to comply with the procedural requirements of the FAR because the contracting officer failed to notify or seek the approval of the appropriate agency official.<sup>4</sup>

The FAR states that a contracting officer who "receives or obtains information of a violation or possible violation of [the PIA] must determine if the reported violation or possible violation has any impact on the pending award or selection of the contractor." FAR § 3.104-7(a). If the contracting officer determines that there is no impact on the procurement, he or she must forward the "information concerning the violation or possible violation and documentation supporting a determination that there is no impact on the procurement to an individual designated in accordance with agency procedures." Id. § 3.104-7(a)(1). If that individual agrees with the

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<sup>4</sup> In its November 10 supplemental protest, CTC challenged the procedural sufficiency of the PIA investigation but did not challenge the reasonableness of the agency's conclusions in this regard. Further, the protester's December 1 comments on the agency report only addressed the procedural challenges, and did not address the reasonableness of the agency's conclusions. CTC's December 19 comments in response to questions posed by our Office concerning the procedural adequacy of the PIA analysis argued, for the first time, that the agency unreasonably concluded that ATI did not violate the PIA. Because the arguments concerning the reasonableness of the agency's analysis and conclusions were not raised within 10 days of the protester's receipt of the PIA investigation report, on October 31, we dismiss this argument as untimely. 4 C.F.R. § 21.2(a)(2).

contracting officer's analysis, the procurement may proceed; if the individual does not agree, the individual must forward the information to the HCA and advise the contracting officer not to proceed with the award. Id. § 3.104-7(a)(2).

The record here shows that the Navy chief of the contracting office (CCO) responsible for this procurement was briefed by the contracting officer regarding the PIA allegations. Decl. of Navy CCO (Dec. 12, 2016) at 1. The Navy states that the CCO is the individual designated for receiving notice of PIA allegations under FAR § 3.104-7. Id. The CCO states that the contracting officer briefed him in detail regarding the PIA allegations concerning ATI, and that the CCO concurred with the contracting officer's conclusion that there was no evidence of a violation of the PIA. Decl. of Navy CCO (Dec. 12, 2016) at 1. On this record, we conclude that the Navy's PIA investigation complied with the procedural requirements of FAR § 3.104-7, and therefore find no basis to sustain the protest.

#### Responsibility Determination

Next, CTC argues that the contracting officer's determination that ATI was a responsible contractor was flawed because it was based on an unreasonable assessment of the OCI allegations discussed above, and because the awardee failed to voluntarily disclose to the agency information regarding its potential OCIs. For the reasons discussed below, we find no basis to sustain the protest.

The FAR provides that a purchase or award may not be made unless the contracting officer makes an affirmative determination of the prospective awardee's responsibility. FAR § 9.103(b). In most cases, responsibility is determined based on the standards set forth in FAR § 9.104-1, and involves subjective business judgments that are within the broad discretion of the contracting activities. Reyna-Capital Joint Venture, B-408541, Nov. 1, 2013, 2013 CPD ¶ 253 at 2. Our Office generally will not consider a protest challenging an agency's affirmative determination of an offeror's responsibility. 4 C.F.R. § 21.5(c). We will, however, review a challenge to an agency's affirmative responsibility determination where the protester presents specific evidence that the contracting officer unreasonably failed to consider information that, by its nature, would be expected to have a strong bearing on whether the awardee should be found responsible. Id.; FCi Fed., Inc., B-408558.4 et al., Oct. 20, 2014, 2014 CPD ¶ 308 at 7.

Here, CTC argues that the contracting officer's OCI investigation, performed prior to award, was incomplete and failed to resolve the conflicts that should have barred award to ATI. Specifically, the protester argues that although the contracting officer was aware of the unequal access to information allegations, the contracting officer's OCI analysis did not specifically address the biased advice arguments raised in CTC's protest of the current award (B-412795.2). For this reason, the protester argues that the contracting officer's responsibility determination must not have been aware of the facts which formed the basis of the protester's biased advice OCI

allegations. Contrary to the protester's assertions, the contracting officer's OCI analysis discussed the [DELETED] contracts and agreements upon which CTC based its biased advice arguments. See AR, Attach. AA, OCI Investigation Report, at 15-16. Thus, while the protester disagrees with the contracting officer's conclusions regarding this information, there is no basis to conclude that she was unaware of it, as the protester alleges.

The protester also argues that the awardee should have been found nonresponsible because it failed to voluntarily disclose information concerning potential OCIs in its initial proposal. As the agency notes, however, the initial RFP did not require offerors to submit statements concerning actual or potential OCIs; the agency added this requirement to the amended RFP following corrective action in response to CTC's initial protest. See RFP amend. 3 at 2-4. In any event, the protester does not demonstrate that the contracting officer was unaware of the facts regarding the OCI allegations, and instead challenges the reasonableness of the contracting officer's responsibility determination. On this record, we find no basis to sustain CTC's protest with regard to the limited circumstances under which our Office reviews affirmative responsibility determinations, i.e., a contracting officer's alleged failure to consider relevant available information.

#### Technical Evaluation

Next, CTC argues that the Navy unreasonably evaluated its technical proposal by revising the solicitation requirements without advising it of the change. For the reasons discussed below, we find no basis to sustain the protest.

As relevant here, the RFP provided the following instructions for offerors' proposals:

(A) Offerors are expected to be sufficiently knowledgeable of the missions and administrative procedures of the Navy ManTech Centers of Excellence to adequately prepare their offers and other proposal information to be submitted under this solicitation. Information relating to operational, strategic plans and technical programs is available from various documents, some of which can be accessed on the Internet at the Navy ONR Website: <http://www.onr.navy.mil>.

RFP at 27.

For the project development and management evaluation factor, the RFP instructed offerors to address the following requirements:

(a) Understanding of Requirement. The Offeror shall provide a narrative of the Offeror's understanding of ONR's task requirements outlined in Section C of this solicitation and Attachment 1, entitled, "Navy Manufacturing Technology (ManTech) Navy Metalworking

Center (NMC) of Excellence Statement of Work.” The Offeror shall discuss its approach and experience in performing technical project development and management. It is important that the Offeror’s proposal provide evidence of detailed knowledge of and/or experience in performing the identified tasks in the same or similar environment(s).

(b) Project Development. The Offeror will describe a process and strategies for the identification, development, and selection of technical Navy ManTech projects. This includes the demonstration of an effective project solution identification process that includes a method of identifying and prioritizing Naval Metal Working manufacturing technologies that are highly likely to be implemented by industry and support Navy acquisition program needs. Describe the process for selecting viable solutions to meet Navy needs and how project plans will be developed and delivered in a timely manner to the Government for approval. Include the Offeror’s experience and track record of working with Government program offices and industry to identify needs and appropriate technology solutions.

(c) Project Management. The Offeror shall describe its approach to manage and successfully execute the projects to achieve the desired technical success and transition of technology within project schedule and budget. Describe how factors such as technology implementation risk and financial return (i.e., as affordability assessments, return on investment, cost savings or avoidance, etc.) will be monitored during the project and what techniques will be used to improve these factors over the life of the project.

Id. at 32-33.

The RFP stated that offerors’ proposals would be evaluated based on the following criteria for the project development and management evaluation factor:

Proposed process for technical project development including identification of effective project solutions likely to be implemented at U.S. metalworking manufacturers to support cost reduction measures for key Naval platforms.

Demonstrated capability to effectively manage projects from technical, schedule, budget, implementation, and financial return perspectives.

Demonstrated understanding of project-level deliverables.

Id. at 47.

CTC states that, during its performance of the incumbent contract, it developed an “expedited project initiation” process for preparing projects for review. Protest (B-412795.2) at 36-37. The protester states that this expedited review process involves the initial proposal of several projects to the agency as a group, followed by subsequent development of more detailed plans and approval by the agency. Id. at 36; see AR, Attach. I, CTC Technical Proposal, at 26. The protester argues that this process was intended to address a “bottleneck” in the initiation of projects accepted by the agency, and had been utilized by CTC since its adoption in 2007. Protest (B-412795.2) at 36-37. In its protest, CTC contends that, “[a]s an offeror with longstanding experience on this requirement, CTC reasonably relied upon prior practice in framing its proposal, and included the ‘expedited’ approach in its proposal, at Volume I, page 26.” Id. at 37.

The Navy’s technical evaluation did not identify any concerns regarding the protesters’ proposed expedited review process. The contracting officer’s recommendation to the SSA, however, stated the following regarding the protester’s proposal under the project development and management factor: “[t]he CTC expedited approach requires CTC and the Government to interface with the projects twice rather than once . . . [which] increases the level of effort for CTC as well as adds additional analysis and modification work for the Contracting Officer.” AR, Attach. P, Contracting Officer’s Source Selection Recommendation, at 6. The contracting officer concluded that although CTC’s proposal “shows a time tested, thoughtful approach to project development, there are an abundance of additional steps that increase cost and time (on both the contractor and the Government)” which provided no basis to conclude that CTC’s technical proposal “far outweighs that of ATI.” Id. at 7.

The source selection decision noted that the expedited process was “not a requirement of the RFP and was developed by CTC as means for getting projects on task order faster.” AR, Attach. Q, SSDD, at 14. The SSA cited the contracting officer’s concern regarding the additional government effort required by CTC’s expedited process. Id. The SSA concluded that although CTC’s proposal received a higher rating than ATI’s for the project development and management factor, CTC’s proposal under factor 2 was “only ‘slightly stronger’ than ATI’s response” to factor 2. Id. at 15.

CTC argues that the RFP required offerors to “conform” their proposed technical approaches to the current practices followed by the protester on the incumbent contract. The protester argues that because the Navy accepted its expedited approach and did not direct it to change that approach, the agency effectively adopted CTC’s approach as the standard practice for the agency’s requirements. The protester argues, therefore, that its proposal should have merited a “significantly higher technical evaluation because CTC proposed to follow existing Agency-approved procedures.” Protester’s Comments (Dec. 1, 2016) at 13. The

protester further argues the agency's criticism of CTC's expedited approach, and its acceptance of ATI's proposal that did not follow CTC's expedited approach, constituted an undisclosed change to the agency's requirements.

As set forth above, nothing in the RFP required offerors to "conform" their proposals to CTC's method of performance, or to follow the exact procedures currently employed by the protester on the current contract. Rather, offerors were required to be "sufficiently knowledgeable of the missions and administrative procedures of the Navy ManTech Centers of Excellence to adequately prepare their offers and other proposal information to be submitted under this solicitation." RFP at 27. For the project development and management evaluation factor, the RFP required each offeror to "describe a process and strategies for the identification, development, and selection of technical Navy ManTech projects," and to "[i]nclude the Offeror's experience and track record of working with Government program offices and industry to identify needs and appropriate technology solutions." *Id.* at 32. Moreover, nothing in the RFP stated that the agency deemed the approach followed by CTC on the incumbent contract to be superior to other methods or that proposing the same approach would result in the highest possible ratings.

Thus, even though the Navy accepted CTC's expedited approach during the performance of the incumbent contract, the agency was within its discretion under the terms of the solicitation to evaluate whether that approach was appropriate based on the RFP's evaluation criteria, and to assign strengths or weaknesses based on that approach. To the extent the protester believed that the RFP should have required offerors to propose an approach that conformed to CTC's performance on the incumbent contract, it should have filed a protest challenging the terms of the solicitation prior to the time for receipt of initial proposals.<sup>5</sup> 4 C.F.R. § 21.2(a)(1). On this record, we find no basis to sustain the protest.

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<sup>5</sup> CTC also argues that the Navy was required to conduct discussions to address the changed requirements. As discussed herein, we conclude that the agency did not change its requirements and that the evaluation of CTC's proposal was consistent with the terms of the solicitation. The RFP also advised offerors that the agency intended to make award without discussions, and the agency did not open discussions with the offerors. RFP at 36, 41; COS/MOL at 3. A contracting officer has broad discretion in deciding whether to hold discussions, and we generally will not review an agency's decision not to initiate discussions. See Kiewit Louisiana Co., B-403736, Oct. 14, 2010, 2010 CPD ¶ 243 at 3. Based on the record here, we see nothing to call into question the agency's decision not to engage in discussions.

## Cost Realism Evaluation

Next, CTC argues that the Navy unreasonably evaluated the realism of the offerors' proposed costs. The protester contends that the agency failed to evaluate offerors' proposals on a common basis, that the agency failed to downwardly adjust the protester's evaluated costs, and that the agency failed to address a potential concern regarding the awardee's overhead costs. For the reasons discussed below, we find no basis to sustain the protest.

When an agency evaluates a proposal for the award of a cost-reimbursement contract, an offeror's proposed estimated costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. FAR §§ 15.305(a)(1), 15.404-1(d); CSI, Inc.; Visual Awareness Techs. & Consulting, Inc., B-407332.5 et al., Jan. 12, 2015, 2015 CPD ¶ 35 at 5-6. Consequently, the agency must perform a cost realism analysis to determine the extent to which an offeror's proposed costs are realistic for the work to be performed. FAR § 15.404-1(d)(1). An agency is not required to conduct an in-depth cost analysis, or to verify each and every item in assessing cost realism; rather, the evaluation requires the exercise of informed judgment by the contracting agency. Cascade Gen., Inc., B-283872, Jan. 18, 2000, 2000 CPD ¶ 14 at 8; see FAR § 15.404-1(c). Further, an agency's cost realism analysis need not achieve scientific certainty; rather, the methodology employed must be reasonably adequate and provide some measure of confidence that the rates proposed are reasonable and realistic in view of other cost information reasonably available to the agency as of the time of its evaluation. SGT, Inc., B-294722.4, July 28, 2005, 2005 CPD ¶ 151 at 7. Our review of an agency's cost realism evaluation is limited to determining whether the cost analysis is reasonably based and not arbitrary. Jacobs COGEMA, LLC, B-290125.2, B-290125.3, Dec. 18, 2002, 2003 CPD ¶ 16 at 26.

First, CTC argues that the Navy's cost realism analysis was unreasonable because the offerors proposed differing technical approaches, and the agency did not assess these approaches on a common basis. Protester's Comments (Dec. 1, 2016) at 22. The protester contends that without such an assessment, the agency had no basis to conclude that the offerors' proposed costs were realistic.

A cost realism evaluation must evaluate each offeror's unique technical approach and assess whether the costs proposed are realistic for that approach. FAR § 15.404-1(d)(1); Priority One Servs., Inc., B-288836, B-288836.2, Dec. 17, 2001, 2002 CPD ¶ 79 at 4. Here, as noted by the protester, the offerors proposed differing technical approaches. Further, as discussed above, we find no merit to CTC's argument that the RFP required that all offerors propose to perform based on the protester's approach for the incumbent contract. As a result, the protester's argument does not provide a basis to sustain the protest--provided the agency assessed the realism of each offeror's proposed cost relative to its unique technical approach. The record here shows that the agency's evaluation examined each

offeror's proposed approach and the realism of its proposed costs for that approach. AR, Attach. L, Cost Realism Memorandum, at 7-34.

Next, CTC argues that the Navy's cost realism analysis failed to make downward adjustments to its proposed cost to reflect what the protester contends was the agency's change to the solicitation requirements regarding the protester's "expedited approach" for preparing projects for review. As discussed above, however, the record shows that the agency did not revise the solicitation requirements in the manner alleged by the protester.

Moreover, there was no requirement for the agency to make a downward adjustment under the circumstances, here. As the protester notes, the FAR directs agencies to "adjust[] each offeror's proposed cost, and fee when appropriate, to reflect any additions or reductions in cost elements to realistic levels based on the results of the cost realism analysis." FAR § 15.404-1(d)(2)(ii). We have stated that agencies should make downward adjustments to an offeror's evaluated cost where the proposal shows a misunderstanding of the requirements in a manner which would cause the government to incur a lower cost than that identified in the proposal. See Priority One Servs., Inc., supra at 3-4 (protest sustained where agency concludes that protester misunderstood the requirements for other direct costs; most probable cost should have been reduced to reflect agency's judgment as to costs actually to be incurred). Agencies are not required, however, to make downward adjustments to an offeror's proposed costs if the agency concludes that the higher than estimated costs are the result of factors unique to the offeror, e.g., its technical approach. The S.M. Stoller Corp., B-400937 et al., Mar. 25, 2009, 2009 CPD ¶ 193 at 14-15.

As discussed above, the agency reasonably found that CTC's proposed technical approach was acceptable, albeit with a concern regarding the expedited approach for preparing projects for review. Thus, for purposes of the cost realism analysis, the agency could assume that CTC would incur the costs it proposed in performing its technical approach. For this reason, there was no basis for the agency to downwardly adjust CTC's proposed costs.<sup>6</sup> See id.

Next, CTC argues that the Navy's cost realism evaluation failed to account for a concern raised in one of the comments by a technical evaluator regarding the awardee's proposed reliance on its [DELETED]. The agency's cost evaluation noted

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<sup>6</sup> CTC's comments on the agency report also argued that the Navy made unreasonable downward adjustments to ATI's proposed costs. Protester's Comments (Dec. 1, 2016) at 24-25. This argument, however, was not raised within 10 days of the protester's receipt of the cost evaluation documents on October 31. This argument is therefore untimely. 4 C.F.R. § 21.2(a)(2).



that ATI proposed the use of a “[DELETED]” model which allows for ATI to [DELETED].” AR, Attach. L, Cost Realism Memorandum, at 10. The cost evaluation found that ATI had used the model successfully, and that this approach provided confidence as to the level of effort proposed by the awardee. Id.

CTC argues that the cost evaluation was unreasonable because it did not address the following concern raised by one of the technical evaluators regarding ATI’s [DELETED] model:

Evaluator Response: [DELETED].

AR, Attach. J, Technical Evaluation Sheets-ATI, at 2.

This concern was not reflected in the final technical consensus evaluation. Instead, the evaluation consensus found that the [DELETED] approach was a strength because it offered a “wealth of experience in metal/materials and manufacturing, expertise that would be hard to match.” AR, Attach. K, Technical Evaluation Consensus Report, at 3. Although the consensus report noted the performance periods for the other contracts where ATI [DELETED] team members are currently performing, the agency did not assign a weakness based on this concern. Id.

As our Office has found, it is not unusual for individual evaluator findings to differ from one another, or from the consensus determinations eventually reached. Jacobs Tech., Inc., B-413389, B-413389.2, Oct. 18, 2016, 2016 CPD ¶ 312 at 17. In this regard, it is not unusual for individual evaluator ratings to differ significantly from one another, or from the consensus ratings eventually assigned; indeed, the reconciling of such differences among evaluators’ viewpoints is the ultimate purpose of a consensus evaluation. J5 Sys., Inc., B-406800, Aug. 31, 2012, 2012 CPD ¶ 252 at 13. The overriding concern for our purposes is not whether an agency’s final evaluation conclusions are consistent with earlier evaluation conclusions (individual or group), but whether they are reasonable and consistent with the stated evaluation criteria, and reasonably reflect the relative merits of the proposals. Id.; see, e.g., URS Fed. Tech. Servs., Inc., B-405922.2, B-405922.3, May 9, 2012, 2012 CPD ¶ 155 at 9.

To the extent CTC argues that the Navy’s consensus technical evaluation should have reflected the concern raised by the individual evaluator, instead of the consensus judgment, the protester’s disagreement provides no basis to conclude that the consensus evaluation was unreasonable. As discussed above, the consensus technical evaluation and consensus cost evaluation concluded that ATI’s proposed use of [DELETED] was a strength, rather than a weakness. AR, Attach. K, Technical Evaluation Consensus Report, at 3. Consequently, the absence of this concern from the cost realism evaluation does not provide a basis to sustain the protest, as the individual technical evaluator’s concern does not represent the consensus judgment of the agency as to risks posed by the

awardee's proposed technical approach. Moreover, the consensus evaluation noted that ATI has a high success rate (75 to 85 percent) for implementing this model, "which realized cost savings of over \$1.3B with over 270 projects," and concluded that "[u]tilizing the [DELETED] could produce cost savings which would enable more funds to be executed for technical efforts." *Id.* at 4. CTC's disagreement with the agency's judgment here, without more, does not provide a basis to sustain the protest.

### Award Decision

Finally, CTC argues that the Navy's source selection decision was unreasonable and inconsistent with the solicitation's stated best-value award criteria. For the reasons discussed below, we find no basis to sustain the protest.

CTC first argues that the selection decision was unreasonable because the SSA relied on the conclusions of the contracting officer, rather than those of the technical evaluators. The technical evaluators assigned CTC's proposal a rating of outstanding for the project development and management factor, and ATI's proposal a rating of good. AR, Attach. K, Technical Evaluation Consensus Report, at 9, 23. The source selection decision cited numerous areas where CTC's proposal provided advantages over ATI's proposal, but also concluded that CTC's proposal was only "slightly stronger" than ATI's for the project development and management factor, in part because of the agency's concerns regarding the additional government effort associated with CTC's "expedited approach" for preparing projects for review. AR, Attach. Q, SSDD, at 11-16. The protester notes that the technical evaluators did not cite concerns regarding the expedited approach, and that the concern regarding this approach was made "privately" by the contracting officer in her award recommendation to the SSA. Protester's Comments (Dec. 1, 2016) at 13. The protester argues therefore that it was unreasonable for the contracting officer to "override" the judgment of the technical evaluators, and thus unreasonable for the SSA to rely upon the views of the contracting officer. *Id.*

As our Office has recognized, source selection officials and higher-level agency evaluators may reasonably disagree with the evaluation ratings and results of lower-level evaluators. *See, e.g., Verify, Inc.*, B-244401.2, Jan. 24, 1992, 92-1 CPD ¶ 107 at 6-8. The protester does not demonstrate why a contracting officer is prohibited from reviewing the evaluations of offerors' proposals, or from revising those evaluations. In any event, the relevant inquiry is not whether the contracting officer revised or overrode the judgments of the lower-level evaluators; rather, the issue for our Office's review is whether the agency's final evaluation was reasonable.<sup>7</sup> *See*

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<sup>7</sup> CTC also contends that the contracting officer's recommendation to the SSA was improper because the agency's source selection plan for this procurement did not specify a role for the contracting officer in the evaluation of proposals. Protester's  
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American Tech. Solutions Int'l Corp., B-412442, B-412442.2, Feb. 12, 2016, 2016 CPD ¶ \_\_\_ at 7. Where, as here, the SSA provides a reasonable explanation for his judgment, there is no basis to find that judgment unreasonable simply because it differs from the views of lower-level evaluators. See KPMG Consulting LLP, B-290716, B-290716.2, Sept. 23, 2002, 2002 CPD ¶ 196 at 16-17.

Next, CTC argues that the source selection decision improperly concluded that the offerors' proposals were equal under the technical factors, and thereby made award on a low-cost, technically-acceptable basis. The record does not support this argument.

Generally, in a negotiated procurement, an agency may properly select a lower-rated, lower-priced proposal where it reasonably concludes that the price or cost premium involved in selecting a higher-rated proposal is not justified. DynCorp Int'l, LLC, B-412451, B-412451.2, Feb. 16, 2016, 2016 CPD ¶ 75 at 22-23. The extent of such tradeoffs is governed only by the test of rationality and consistency with the evaluation criteria. Best Temporaries, Inc., B-255677.3, May 13, 1994, 94-1 CPD ¶ 308 at 3. While an agency has broad discretion in making a tradeoff between price and non-price factors, an award decision in favor of a lower-rated, lower-priced proposal must acknowledge and document any significant advantages of the higher-priced, higher-rated quotation, and explain why they are not worth the price premium. DynCorp Int'l, LLC, *supra*. Our Office has found that when SSAs have performed this analysis, it is within their discretion to choose a lower-rated, lower-priced proposal in a best-value procurement. See MD Helicopters, Inc.; AugustaWestland, Inc., B-298502 *et al.*, Oct. 23, 2006, 2006 CPD ¶ 164 at 49. A protester's disagreement, without more, with the agency's determinations does not

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Comments (Dec. 1, 2016) at 13-14, 26-27. An agency's source selection plan is an internal guide that does not give rights to offerors; it is the RFP's evaluation scheme, not internal agency documents such as source selection plans, to which an agency is required to adhere in evaluating proposals. Meadowgate Techs., LLC, B-405989, B-405989.3, Jan. 17, 2012, 2012 CPD ¶ 27 at 6 n.7. We therefore conclude that this argument does not state a valid basis of protest. See 4 C.F.R. §§ 21.1(c)(4), (f). In any event, the protester is incorrect that the contracting officer had no role in the evaluation of proposals. In this regard, the source selection plan stated that the contracting officer's duties included the following: "Manage all business aspects of the acquisition and advise and assist the SSA in the execution of the responsibilities of the process, and work with the [technical evaluation team] Chairperson to ensure the evaluation is conducted in accordance with the evaluation criteria specified in the solicitation." AR, Attach. B, Source Selection Plan, at 8 (emphasis added).

establish that the evaluation or source selection was unreasonable. Weber Cafeteria Servs., Inc., B-290085.2, June 17, 2002, 2002 CPD ¶ 99 at 4.

Here, the RFP advised offerors that “[t]he Technical Factors are significantly more important than the Cost Factor.” RFP at 46. The RFP further provided that “[b]ecause technical considerations are significantly more important than cost, the closer the technical scores of the various proposals are to one another, the more important cost considerations become.” Id.

The protester argues that the source selection decision “manufactured artificial technical equality” between the two offerors’ proposals, and that award was therefore made on a lowest-cost, technically-acceptable basis.<sup>8</sup> Protester’s Comments (Dec. 1, 2016) at 26. The source selection decision, however, clearly recognized that CTC’s proposal was more highly rated than ATI’s proposal. In this regard, the SSA specifically recognized that CTC’s proposal received higher ratings under the project development and management factor and the key personnel and staffing factor. AR, Attach. Q, SSDD, at 11-13. The SSA also acknowledged that CTC’s proposal was, overall, more highly rated under the non-price evaluation factors than ATI’s proposal. Id. at 13.

The SSA concluded that the RFP required a tradeoff between CTC’s higher-rated proposal, and ATI’s lower-cost proposal. Id. For evaluation factor 2, the SSA noted that CTC’s experience as the incumbent allowed it to include “real world examples of identification of effective project solutions likely to be implemented at US metalworking manufacturers to support cost reduction measures for key Naval platforms,” and also noted that CTC had worked on projects with larger budgets than ATI. Id. at 14. The SSA also noted that CTC’s project development process was more detailed than ATI’s, and that the protester proposed experienced subject matter experts. Id. at 14-15. The SSA found, however, that CTC’s approach for “expedited” reviews, as discussed above, created risks based on the additional level of effort on the part of the government and a risk of cost fluctuations. Id. at 15. The SSA concluded that “there is nothing in the Technical Evaluation Report or in CTC’s proposal that leads me to conclude that CTC’s technical approach far outweighs that of ATI.” Id.

With regard to the key personnel and staffing evaluation factor, the SSA found that the protester’s proposal “presents ‘little to no change to the technical and management personnel’ that will seamlessly transition from one contract to

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<sup>8</sup> CTC also argues that the SSA’s analysis improperly relied on the evaluation by the contracting officer, rather than the higher ratings for CTC’s proposal that were evaluations assigned by the technical evaluators. As discussed above, we find no merit to this argument.

another.” Id. at 16. The SSA also noted that “Key Personnel are 100% dedicated to the NMC program and have demonstrated their technical capabilities during CTC’s tenure as NMC incumbent.” Id. The SSA found, however, that “CTC’s proposed minimal disruption and 100% dedication to NMC” did not merit the associated cost premium as compared to ATI’s proposal. Id.

The SSA concluded that, despite the advantages of CTC’s proposal under the non-cost evaluator factors, these advantages did not merit a \$1.6 million cost premium over ATI’s proposal. Id. The SSA further stated that: “I have determined that CTC’s superior rating for Factor 2 and for Factor 4, taken individually or collectively, do not outweigh the price/cost variance between the two offerors.” Id.

In sum, the record does not support CTC’s argument that the agency ignored the differences between the offerors’ proposals or that the agency made award to ATI on the basis of its lower cost, alone. Instead, the record shows that the SSA made a tradeoff as anticipated by the RFP, and that this tradeoff adequately documented the basis for the SSA’s judgment. We therefore find no basis to sustain the protest.

The protest is denied.

Susan A. Poling  
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