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Decision

Matter of: ITT Electronic Systems Radar, Reconnaissance & Acoustic Systems

File: B-405608

Date: December 5, 2011

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William W. Thompson, Esq., Lori Ann Lange, Esq., and Aaron S. Brotman, Esq., Peckar & Abramson, for Northrop Grumman Systems Corporation, an intervenor.
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Glenn G. Wolcott, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably evaluated awardee's proposal as superior to protester's proposal under the most important evaluation factor, mission capability, based on the agency's determination that awardee's proposal offered technology that exceeded the solicitation requirements and would benefit the government.
2. Agency reasonably assigned an unknown confidence rating to protester's proposal under the past performance evaluation factor where the agency properly considered the dollar value of protester's prior contracts, as well as the dissimilarity of technology and type of effort that had been previously provided, and concluded that the past performance information formed an insufficient basis for making a substantive performance confidence assessment.
3. Protester's assertion that agency should have upwardly adjusted the price that awardee proposed under fixed-price contract line item numbers (CLINs) is without merit where such adjustment is precluded by law, and the terms of the solicitation expressly provided that any evaluated risk associated with fixed-price CLINs would be reflected in the agency's evaluation under the mission capability evaluation factor.

DECISION

ITT Electronic Systems Radar, Reconnaissance & Acoustic Systems, of Van Nuys, California, protests the Department of the Air Force's award of a contract to Northrop Grumman Systems Corporation, of Herndon, Virginia, pursuant to request for proposals (RFP) No. FA8730-10-R-0002, to provide deployable instrument landing systems (D-ILS) for ILS-equipped aircraft at remote locations.¹ ITT protests various aspects of the agency's source selection process, including the agency's evaluation under each of the three evaluation factors.

We deny the protest.

BACKGROUND

The solicitation was issued in September 2010, seeking proposals to provide 34 D-ILS systems over a 5-year period.² Because deployable ILS systems have not previously been acquired, the solicitation anticipated that offerors would submit proposals to develop deployable versions of existing, fixed-site ILS systems and contemplated the "integration of existing mature commercial technologies." AR, Tab 23, Source Selection Plan, at 1. Accordingly, the solicitation stated that "the Contractor shall develop" a D-ILS system to meet all functional and performance requirements stated in the solicitation's SRD.³ AR, Tab 4, RFP, Statement of Objectives, at 1.

The solicitation advised offerors that the source selection decision would be based on a best value determination that reflected the agency's integrated assessment of

¹ The D-ILS systems to be acquired will be capable of supporting highly mobile forces at airfields throughout the world and will operate in various adverse weather conditions. Agency Report (AR), Tab 4, RFP, System Requirements Document (SRD), at 1.

² The 5-year performance period is divided into a 2.5-year period for engineering, manufacturing and development, and a 2.5-year period for production. AR, Tab 18, Proposal Analysis Report (PAR), at 2.

³ In this regard, contract line item numbers (CLINs) 0001 and 0007 require the "design, development, manufacture, integration and testing" of 2 pre-production D-ILS systems. AR, Tab 4, RFP at 2, 4.

the following evaluation factors: mission capability,⁴ past performance⁵ and cost/price.⁶ AR, Tab 4, RFP amend. 5, § M at 2. The solicitation provided that mission capability was the most important evaluation factor, that past performance and cost/price were equally important, and that the non-cost/price factors combined were significantly more important than cost/price. Id.

With regard to mission capability, the solicitation established various performance requirements that the system selected for award will be required to meet. Of relevance to this protest, the solicitation stated:

3.5.1.2 Sited Performance

When sited in accordance with FAA [Federal Aviation Administration]-6750.16D Chapter 2, the D-ILS azimuth component **shall** [1] be capable of providing performance equivalent to that of a fixed Category I ILS localizer installation that employs a 14-element single frequency log periodic dipole antenna array. In this requirement, “equivalent”

⁴ The solicitation divided the mission capability factor into three equally-weighted subfactors--system design, system performance, and systems engineering/program management--and provided that ratings would be assigned at the subfactor level. The solicitation further provided that two equally important ratings--a technical rating and a risk rating--would be assigned under each subfactor. AR, Tab 4, RFP amend. 5, § M at 2-3.

⁵ Each offeror was directed to submit past performance information regarding “the (five) 5 most relevant efforts in the past (ten) 10 years” for itself and its significant subcontractors. AR, Tab 4, RFP amend. 5, § L at 14. The solicitation further provided that, based on an assessment of the information submitted, the agency would assign confidence ratings of substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence.

⁶ The solicitation contemplated the submission and evaluation of fixed prices for all but two of the solicitation’s CLINs (travel costs under CLIN 0006 were evaluated at \$250,000 for all offerors, and proposed costs for post-testing refurbishment of 2 pre-production units were submitted and evaluated on a cost-reimbursement basis under CLIN 0012). AR, Tab 4, RFP at 2-9.

performance includes compliance with the Category I localizer criteria in FAA Order 8200.1C. . . .^{7]}

AR, Tab 4, SRD at 24 (bolding in original).

On or before the October 25, 2010 closing date, initial proposals were submitted by four offerors, including ITT and Northrop.⁸ Northrop's proposal offered a deployable version of Northrop's existing commercial fixed-site ILS ([deleted]) which has been deployed in multiple locations outside the United States.⁹ ITT's proposal offered a deployable version of a fixed-site ILS ([deleted]) developed by [deleted], which has been deployed and tested within the United States as well as at other locations around the world.

Thereafter, the agency evaluated the initial proposals, established a competitive range that included ITT and Northrop, and conducted discussions with the competitive range offerors. In conducting discussions, the agency provided offerors with various evaluation notices (ENs) identifying areas in their proposals that needed to be addressed, considered the offerors' responses to those ENs, and thereafter requested final revised proposals.¹⁰ With its requests for final revised proposals, the agency provided each offeror with the agency's assessments of the offeror's own proposal for each of the evaluation factors and subfactors. AR, Tab 14, Request for Final Proposal, June 17, 2011, attach. 1. Thereafter, ITT and Northrop each made their final proposal submissions which the agency evaluated.

⁷ FAA Order 8200.1C is a joint Federal Aviation Administration and Department of Defense publication that prescribes standardized procedures for the flight inspection of navigation aids, including ILS ground installations. AR, Agency Memorandum of Law, at 6. In addition to the requirements for the azimuth component in SRD section 3.5.1.2 above, section 3.5.2.2 of the SRD contained similar performance requirements for the glide slope component. Azimuth and glide slope components provide lateral and vertical guidance, respectively, for approaching aircraft. AR, Tab 4, SRD at 25.

⁸ The other offerors' proposals are not relevant to resolution of this protest and are not further discussed.

⁹ Northrop's proposal states that the technology used in the [deleted] ILS has been approved by authorities in Canada, Germany, China, and Norway. AR, Tab 5, Northrop Proposal, Vol. II, at 1-6 through 1-8.

¹⁰ In May 2011, the agency first requested final revised proposals but thereafter concluded that another round of discussions was necessary. In June 2011, the agency again requested submission of final revised proposals.

In assigning technical ratings to Northrop's and ITT's proposals under the most important evaluation factor, mission capability, the agency assigned strengths to both proposals on the basis that they each exceeded the solicitation requirements by proposing to [deleted]. AR, Tab 18, Proposal Analysis Report, at 8, 10. In evaluating Northrop's proposal, the agency assigned another strength on the basis of Northrop's proposed "[deleted] localizer design,"¹¹ which was considered advantageous to the government because it "allowed operation in certain multipath-challenged runway environments."¹² Id. at 8. Based on this additional evaluated strength, the agency assigned Northrop's proposal a technical rating of exceptional¹³ under the mission capability factor, system design subfactor. In contrast, ITT's proposal offered only the required [deleted] localizer, and the agency assigned ITT's proposal a technical rating of acceptable. With regard to the separate risk ratings for this subfactor,¹⁴ both ITT's and Northrop's proposals were rated as moderate+.¹⁵

Overall, the agency's ratings of ITT's and Northrop's final revised proposals were as follows:

¹¹ As noted above, the solicitation required that, at a minimum, offerors must propose a system with performance capabilities equivalent to that provided by a specifically defined [deleted] localizer. AR, Tab 4, SRD at 24.

¹² The agency also identified various risks and weaknesses associated with both offerors' proposals. AR, Tab 18, Proposal Analysis Report, at 8-10.

¹³ In evaluating proposals under the mission capability factor, the agency assigned technical ratings of exceptional, acceptable, marginal, and unacceptable, which reflected the agency's assessment of the extent to which each proposal met, exceeded, or failed to meet the solicitation's minimum requirements. AR, Tab 24, Mandatory Procedures for Air Force Source Selections, at 11.

¹⁴ As noted above, the solicitation specifically provided for assignment of separate technical ratings and risk ratings under each of the mission capability subfactors. AR, Tab 4, RFP amend. 5, § M at 2.

¹⁵ In assessing risk, the agency assigned ratings of low, moderate, high, or unacceptable, which reflected the agency's assessments of the potential for each offeror's proposed approach to cause disruption of schedule, increased cost or degradation of performance. AR, Tab 4, RFP amend. 5, § M at 3. A plus "+" was used when risk was evaluated to be within the upper boundaries of a rating, but not high enough to merit the next inferior rating. Id.

	Northrop	ITT
Mission Capability		
System Design: Tech Rating Risk Rating	Exceptional Moderate+	Acceptable Moderate+
System Performance: Tech. Rating Risk Rating	Acceptable Low	Acceptable Low
Sys. Eng'g/ Prog. Mgmt.: Tech. Rating Risk Rating	Acceptable Moderate	Acceptable Low+
Past Performance Confidence Assessment	Satisfactory Confidence	Unknown Confidence
Cost/Price	\$57,085,000	\$62,307,000

AR, Tab 17, Final Decision Brief, at 102.

Based on the evaluation of final revised proposals, Northrop's proposal was selected for award. In documenting the basis for the source selection decision, the source selection authority (SSA) compared ITT's and Northrop's ratings under each evaluation factor, concluding that Northrop's proposal was superior with regard to mission capability due to its proposal of a [deleted] localizer; that Northrop's evaluated past performance was superior "because of a greater body of relevant work"; and that Northrop's proposal offered the lowest cost/price. AR, Tab 19, Source Selection Decision, at 8-9.

ITT was subsequently notified of the source selection decision. This protest followed.

DISCUSSION

ITT's protest challenges the agency's evaluation under each of the three evaluation factors. With regard to mission capability, ITT asserts that Northrop's technical rating of exceptional was improper. With regard to the past performance factor, ITT asserts that its own rating of unknown confidence was improper. With regard to the cost/price factor, ITT asserts that the agency should have upwardly adjusted Northrop's evaluated price. As discussed below, ITT's assertions are without merit.

Mission Capability Factor

ITT first asserts that the agency's assignment of an exceptional rating to Northrop's proposal under the mission capability factor "was unreasonable because [Northrop's] D-ILS system has never been flight inspected in the United States in accordance with FAA Order 8200.1C." Protest, Aug. 26, 2011, at 15. ITT's argument in this regard is based on the premise that the solicitation required an offeror's

proposed solution to have already been tested in accordance with FAA Order 8200.1C.¹⁶ ITT is mistaken.

Agencies are required to evaluate offers in accordance with a solicitation's stated requirements. The Boeing Co., B-311344 et al., June 18, 2008, 2008 CPD ¶ 114 at 38. Where a dispute exists as to a solicitation's actual requirements, we will first examine the plain language of the solicitation. See, e.g., Carthage Area Hosp., Inc., B-402345, Mar. 16, 2010, 2010 CPD ¶ 90 at 5 n.7; W. Gohman Constr. Co., B-401877, Dec. 2, 2009, 2010 CPD ¶ 11 at 3-4.

Here, in asserting that the solicitation provided that proposed solutions were to have been flight inspected in accordance with FAA Order 8200.1C, ITT relies on section 3.5.1.2 of the solicitation's SRD, titled "Sited Performance." As quoted above, that provision states that, "[w]hen sited . . . the D-ILS azimuth component **shall** [1] be capable of providing performance equivalent to that of a fixed Category I ILS localizer installation that employs a 14-element single frequency log periodic dipole antenna array," and adds that "equivalent" performance includes compliance with the criteria in FAA Order 8200.1C. AR, Tab 4, SRD at 24.

As noted above, this solicitation provision, which identifies the mandated performance requirements, prefaces those performance requirements with the plain language "when sited." Accordingly, it is clear that offerors were required to offer a system that, when sited, will perform in the manner specified. This solicitation requirement is consistent with, for example, CLIN 0001 of the solicitation which provides that the proposed D-ILS system will be developed, manufactured, and tested after contract award. See AR, Tab 4, RFP at 2. Indeed, as the agency points out, ITT's own proposed solution, which is a modification of [deleted] fixed-site ILS, has not yet been flight inspected, since, like Northrop's, that system does not yet exist. Accordingly, ITT's protest challenging the agency's evaluation of Northrop's proposal on the basis that Northrop's proposed solution has not yet been flight inspected against the specified criteria is without merit.

ITT's protest also asserts that the agency's evaluation of Northrop's proposal under the mission capability factor was unreasonable because Northrop's proposed [deleted] localizer "provided the Air Force with no actual benefit." Protester's Post-Hearing Brief/Supplemental Protest, Nov. 16, 2011 at 3. We disagree.

In reviewing a protest against an agency's evaluation of proposals, our Office will not reevaluate proposals, but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria

¹⁶ More specifically, ITT asserts that the solicitation "contemplated that the proposed D-ILS designs had been flight inspected in the United States to ensure compliance with FAA Order 8200.1C criteria." Protest, Aug. 26, 2011, at 16.

and applicable procurement statutes and regulations. Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. A protester's mere disagreement with the agency's judgments in its evaluation does not establish that the evaluation was unreasonable. VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4.

Here, during the bid protest hearing conducted by this Office,¹⁷ the system design subfactor chief testified as follows:

The reason why [deleted] is a better technology and provides an advantage to the government is there will be some sites for which a [deleted] localizer either won't work at all or there could be some restrictions that have to be imposed by air traffic control.

Hypothetically, if we had the ability to make a list of all the runways in the world, and we ordered it starting with the most benign, and going in order of increasing multi-path interference,¹⁸ if we were to take a D-ILS system and put it in each of those locations, ultimately we get to a point on the list where either we had restrictions or we cannot use the system.

¹⁷ In resolving this protest, this Office conducted a hearing on the record during which testimony was provided by the agency's source selection evaluation team chair, performance confidence assessment group chair, mission capability factor chief, system design subfactor chief, and cost/price factor chief.

¹⁸ The system design subfactor chief further discussed multi-path interference, testifying as follows:

[I]n an ideal world what we want is for the signal to go directly from the antenna [on the ground installation] to the aircraft. And all that the aircraft receives is that directly received signal.

What happens in practice [is] . . . [the ground] signals . . . can be subject to reflections, bending, [or] other interference that's caused by other objects and terrain and structures that are in the vicinity of the airport.

So what the aircraft typically receives is not only the direct signal from the ground installation, there's also a signal that's bounced off another object. . . . What it does is to degrade the accuracy of the guidance that the aircraft is receiving. . . . "[M]ulti-path" is the technical term for this bouncing. . . . [I]f we're at a location where there's a lot of multi-path interference, we will get degradation.

Hearing Transcript at 145-46.

If we had the [deleted] system, we can get further down that list. And it's hard to quantify, because we haven't done the analysis to look at every runway in the world. But there's a significant benefit to the government in having a system that can operate at more runways.

Hearing Transcript at 158-59.

Consistent with the subfactor chief's testimony, the contemporaneous evaluation record reflects the agency's evaluation of Northrop's proposed [deleted] localizer, including the following:

[Northrop's] proposed design for the localizer utilizes a [deleted] antenna system. Owing to its ability to [deleted], the [deleted] localizer technology provides increased immunity to multipath effects compared to a [deleted] array. [Northrop] illustrates this improved performance in Figure 1-8 [of its proposal] which depicts a comparison of the [deleted] of their proposed design with an "FAA [deleted]" localizer. Although [Northrop] does not identify the specific [deleted] localizer that is the basis for this comparison, Volume II Figure 1-8 shows the same qualitative trend with azimuth angle as the [deleted] diagram in Figure 2-7 of FAA Order 6750.16D, which provides additional confirmation that the [deleted] localizer technology exceeds the SRD requirement. The use of localizer array technology with improved multipath rejection is advantageous to the Government because it allows the D-ILS azimuth component to meet Annex 10 requirements and FAA 8200.1C criteria in certain multi-path challenged runway environments for which a [deleted] array is not suitable, and at certain long runways for which the nominal displacement sensitivity would require a course sector angle of less than three degrees.

AR, Tab 16, Consensus Evaluation Summary, at 6-7.

While expressing disagreement with various aspects of the agency's evaluation, ITT has provided no substantive basis to question the agency's analysis or conclusions regarding the two offerors' proposed technology. Accordingly, we reject ITT's assertion that the evaluation of Northrop's proposal was unreasonable because Northrop's proposed [deleted] localizer will provide "no actual benefit" to the agency.

ITT's various protest submissions also contain other assertions challenging Northrop's evaluated superiority under the mission capability factor, including

assertions that the agency failed to independently verify the proposed performance capabilities, failed to adequately document its evaluation, failed to state its minimum requirements, applied unstated evaluation factors, and improperly assigned additional strengths, weaknesses, and risks to the two offerors' proposals. We have considered all of ITT's various assertions in this regard and find no basis to sustain the protest.

Past Performance

ITT next protests the agency's evaluation of ITT's proposal under the past performance factor asserting that assignment of an unknown confidence rating was unreasonable.¹⁹ More specifically, ITT complains that the agency improperly considered the dollar value of the prior contracts ITT submitted for consideration, maintaining that this constituted application of an unstated evaluation factor.

In evaluating offerors' proposals, an agency may properly consider specific, albeit not expressly identified, matters that are logically encompassed by or related to the stated evaluation factors. Science Management Corp., B-207670, Sept. 23, 1983, 83-2 CPD ¶ 362 at 5. Further, we have specifically concluded that the size of a prior contract is a proper consideration in comparing the similarity and complexity of a prior contract to the procurement at issue. See, e.g., J. A. Jones Grupo de Servicios, SA, B-283234, Oct. 25, 1999, 99-2 CPD ¶ 80 at 7. Finally, the evaluation of offerors' past performance is a matter within the contracting agency's discretion, and a protester's mere disagreement with the agency's judgment is insufficient to establish that the agency acted unreasonably. The MIL Corp., B-297508, B-297508.2, Jan. 26, 2006, 2006 CPD ¶ 34 at 10; Hanley Indus., Inc., B-295318, Feb. 2, 2005, 2005 CPD ¶ 20 at 4; Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5.

Here, as noted above, the solicitation required each offeror to submit past performance information for the 5 most relevant efforts that had been performed during the past 10 years by the offeror and its significant subcontractors. AR, Tab 4, RFP amend. 5, § L at 14. Section M of the RFP provided that, in order for a prior contract to be considered, it must be both recent²⁰ and relevant. AR, Tab 4, RFP amend. 5, § M at 7. With regard to relevancy of prior contracts, the solicitation provided that the agency would make assessments of highly relevant, relevant,

¹⁹ We note that, in requesting submission of a final revised proposal, the agency expressly advised ITT that its proposal had been assigned an unknown confidence rating. AR, Tab 14, Request for Final Proposal, June 17, 2011, attach. 1. Nonetheless, ITT's final proposal submission did not address past performance in any way. AR, Tab 15, ITT Final Revised Proposal, June 27, 2011.

²⁰ There is no dispute that ITT's prior contracts met the recency requirement.

somewhat relevant or not relevant; that in making these assessments, the agency would consider the “similarity, complexity, similar technology, type of effort [development and production], contract scope, and type” of the prior product/service delivered; and that these relevancy assessments would reflect the degree to which the prior contracts involved the “magnitude of effort and complexities this solicitation requires.”²¹ Id. at 7-8. Finally, the solicitation stated:

Offerors without a record of relevant past performance or for whom information on past performance is not available or **so sparse that no confidence assessment rating can be reasonably assigned** will not be evaluated favorably or unfavorably on past performance and, as a result, will receive an “Unknown Confidence” rating for the Past Performance factor.

More recent and relevant performance will have a greater impact on the Performance Confidence Assessment than less recent or relevant effort. A strong record of relevant past performance may be considered more advantageous to the Government than an “Unknown Confidence” rating. Likewise, a more relevant past performance record may receive a higher confidence rating and be considered more favorably than a less relevant record of favorable performance.

Id. at 9 (bolding added).

The record shows that ITT submitted information regarding [deleted] of its own prior contracts and [deleted] prior contracts of its subcontractor, [deleted]. The agency’s performance confidence assessment group (PCAG) evaluated the information and ultimately concluded that the efforts performed under the prior contracts were not sufficiently similar to the efforts required under this solicitation (in terms of magnitude, complexity, technology, and the type of effort required) so as to enable the assignment of any substantive confidence assessment. Accordingly, the PCAG assigned a rating of unknown confidence “[b]ased on the offeror’s sparse performance record.”²² AR, Tab 17, Final Decision Brief, at 80.

²¹ With regard to subcontractors, the solicitation provided that prior contracts “will be considered as either Relevant or Not Relevant.” AR, Tab 4, RFP amend. 5, § M at 7.

²² ITT complains that the agency’s PCAG was comprised of different personnel at different points in the procurement process, notes that ITT’s proposal had initially been assigned a satisfactory confidence rating, and asserts that the agency failed to adequately explain the differing assessments. Nothing in the record indicates bias or bad faith on the part of agency personnel, and our review here considers only whether the agency’s final past performance assessment was reasonable.

In considering ITT's and [deleted] prior contracts, the PCAG considered, among other things, the dollar value of those contracts as compared to the expected value of the contract here, concluding that the value of all [deleted] of [deleted] contracts and the value of [deleted] ITT contracts represented mere fractions of the expected value of the protested contract. Specifically, the evaluated prices of ITT's and Northrop's proposals here were over \$62 million and \$57 million, respectively; yet, all of the prior [deleted] contracts, and [deleted] of the ITT contracts, ranged in value from \$0.6 million to a maximum of \$3.7 million. AR, Tab 17, Final Decision Briefing, at 78, 79. Accordingly, the agency concluded that none of these significantly smaller contracts provided a basis for making any substantive confidence assessments.²³ With regard to the remaining higher-value ITT contracts, the agency concluded that the contracts primarily involved [deleted], which was not similar to ILS technology, and that they did not involve [deleted], as contemplated under this solicitation. AR, Tab 17, Final Decision Brief, at 81, 82; Contracting Officer's Statement at 36-38. Accordingly, the agency ultimately concluded that none of the past performance information provided with ITT's proposal provided a sufficient basis to make a substantive confidence assessment.

ITT protests that the agency improperly applied an unstated evaluation factor because the solicitation "did not state that the dollar value of an offeror's past performance reference would be factored into the Air Force's past performance evaluation." Protest, Aug. 26, 2011, at 8. ITT also argues that the presence of past performance information with some degree of relevance required the agency to assign at least a satisfactory past performance rating.²⁴ We disagree.

Here, the solicitation specifically advised offerors that the agency's performance confidence assessments would incorporate consideration of the similarity and complexity of the prior contracts submitted for evaluation. AR, Tab 4, RFP amend. 5, § M at 7. Further, section L of the solicitation required offerors to provide the dollar value for each contract submitted. AR, Tab 4, RFP amend. 5, § L at 26. On this record, we find no basis to question the agency's consideration of the dollar value for each prior contract, since the solicitation stated that the agency would

²³ In considering the [deleted] contracts, the agency's evaluation specifically recognized that the technology involved in those efforts was similar to the technology proposed here and, accordingly, acknowledged that they were "relevant" in that regard. AR, Tab 17, Final Decision Brief, at 77. Nonetheless, because the magnitude of the efforts performed was a mere fraction of the effort that will be required here, the agency ultimately concluded that they did not provide a basis for making a substantive confidence assessment.

²⁴ The record shows that the qualitative assessments regarding ITT contracts, for which qualitative information was provided, were satisfactory or better.

consider the similarity and complexity of those contracts, and consideration of the prior contract values is reasonably subsumed within those criteria. See Science Management Corp., *supra*; J. A. Jones Grupo de Servicios, SA, *supra*. In this context, we also do not question the agency's judgment in determining that prior contracts with values ranging from \$0.6 million to a maximum of \$3.7 million did not provide a basis for the agency to make a performance confidence assessment for a contract valued at nearly \$60 million.

Finally, since the solicitation expressly advised offerors that an unknown confidence rating would be assigned to an offeror "without a record of relevant past performance," or when past performance information is "so sparse that no confidence assessment can be reasonably assigned," we reject ITT's assertion that the agency was obligated to make a substantive confidence assessment based on the existence of past performance information that had some, but limited, relevance to this procurement. Based on our review of the record here, we find no basis to question the reasonableness of the agency's judgment that ITT's higher-value contracts were not sufficiently similar with regard to the technology provided and the type of effort performed to warrant a substantive confidence assessment. See The MIL Corp., *supra*; Hanley Indus., Inc., *supra*; Birdwell Bros. Painting & Refinishing, *supra*. In sum, we find no merit in ITT's protest challenging the agency's assignment of an unknown confidence rating to ITT's proposal under the past performance evaluation factor.²⁵

Cost/Price

ITT next protests the agency's evaluation of Northrop's proposed cost/price, complaining that the agency "did not adjust [Northrop's] total evaluated cost to account for significant, identified performance risks." Protest, Aug. 26, 2011, at 33. In this regard, ITT again complains that Northrop's proposal "has not been previously . . . flight inspected to FAA Order 8200.1C criteria." *Id.* at 34. ITT also asserts that, due to the risks created by that lack of inspection, the agency "irrationally" evaluated Northrop's total cost/price by not making an "upward adjustment, as contemplated by the Solicitation." *Id.* at 34-35.

Where, as here, an RFP provides for the award of a fixed-price contract, the contracting agency may not adjust offerors' prices for purposes of evaluation. Federal Acquisition Regulation § 15.404-1(d)(3); Powersolv, Inc., B-402534, B-402534.2, June 1, 2010, 2010 CPD ¶ 206 at 12. Although an agency may evaluate

²⁵ In its various protest submissions, ITT also argues that the agency's past performance evaluation was insufficiently documented, reflected unequal treatment of the offerors, and was otherwise improper. We have considered all of ITT's assertions challenging the agency's past performance evaluation and find no basis to sustain the protest.

whether an offeror's fixed-price proposal is unrealistically low, and thereby poses a risk of unsuccessful performance, this evaluation is an assessment of the risks regarding the technical proposal. IBM Corp., B-299504, B-299504.2, June 4, 2007, 2008 CPD ¶ 64 at 11.

Here, as noted above, the solicitation required that all pricing (with the limited exception of travel costs under CLIN 0006 and refurbishment of pre-production units under CLIN 0012) must be submitted on a fixed-price basis. AR, Tab 4, RFP at 2-9. Further, while section M of the solicitation stated that cost/price would be evaluated for reasonableness and realism, that section elaborated as follows:

When the Government evaluates an offer as unrealistically low or high compared to the anticipated costs of performance and the Offeror fails to explain these estimated costs, the Government will consider, under the Mission Capability Factor, the Offeror's lack of understanding of the technical requirements and/or objectives.^[26]

AR, Tab 4, RFP amend. 5, § M at 9.

Accordingly, ITT's assertion that the agency "irrationally" failed to "upwardly adjust" Northrop's proposed cost/price constitutes an argument that the agency should have evaluated Northrop's proposal in a manner expressly prohibited by law, as well as contrary to the explicit terms of this solicitation. ITT's protest in this regard is without merit.

Consistent with the clear terms of the solicitation, the record shows that, in evaluating the offerors' proposals under the mission capability factor, the agency, in fact, considered various risks (including the fact that Northrop's proposed technology has not been used in the United States) presented by the offerors' proposed prices under the fixed-price CLINs. In challenging the agency's evaluation under the cost/price factor, ITT makes various assertions that the agency's

²⁶ Consistent with this specific solicitation provision, the solicitation further advised offerors that the agency would perform a realism analysis for CLINs designated as "fixed-price-incentive-firm," but specifically stated, "the price shall not be adjusted as a result of this analysis." AR, Tab 4, RFP amend. 5, § M at 10. Similarly, the solicitation explicitly stated that CLINs designated as "firm-fixed-price" "will be evaluated at the proposed prices." Id. Here, it is difficult to imagine how the solicitation could have more clearly advised offerors that fixed-price CLINs would not be adjusted as a result of the agency's cost/price evaluation. Nonetheless, in pursuing this protest, ITT repeatedly asserts that is precisely what the agency should have done. Protest, Aug. 26, 2011, at 33; Protester's Comments/Supplemental Protest, Oct. 6, 2011, at 39; Protester's Reply to the Agency Supplemental Response, Oct. 25, 2011, at 55.

assessments regarding the relative risks in the offerors' proposals were unreasonable.²⁷ We have considered all of ITT's assertions in this regard and find them to be without merit.

Finally, ITT asserts that Northrop's selection for award was flawed because the agency failed to reasonably evaluate ITT's and Northrop's proposals under CLIN 0012, the cost-reimbursement CLIN for post-testing refurbishment of 2 pre-production units. The record shows that ITT proposed [deleted] for CLIN 0012 and that Northrop proposed only [deleted]. AR, Tab 17, Final Decision Brief, at 61. ITT asserts that "while ITT's cost proposal included realistic proposed cost estimates to perform this work, [Northrop's] cost proposal did not," and maintains that the agency failed to "make appropriate cost adjustments" to CLIN 0012 of Northrop's proposal. Protester's Comments/Supplemental Protest, Oct. 6, 2011, at 72-73.

Competitive prejudice is an essential element of every viable protest. Foundation Health Fed. Servs., Inc.; QualMed Inc., B-254397.4; et al., Dec. 20, 1993, 94-1 CPD ¶ 3 at 42-43. Where no possibility of prejudice is shown or is otherwise evident from the record, our Office will not sustain a protest, even if a deficiency in the agency's evaluation is apparent. Colonial Storage Co.-Recon., B-253501.8, May 31, 1994, 94-1 CPD ¶ 335 at 2.

As discussed above, ITT's final evaluated cost/price for this procurement was \$62,307,000; Northrop's final evaluated cost/price was \$57,085,000. Thus, even if the agency had upwardly adjusted CLIN 0012 of Northrop's proposal to reflect what ITT asserts was a realistic amount, Northrop's evaluated cost/price would have remained substantially lower than that of ITT. As discussed above, we have found no basis to question the agency's determination that Northrop's proposal was superior to ITT's under all of the other evaluation factors. Accordingly, even if the agency should

²⁷ For example, ITT notes that the solicitation required offerors to submit an "analysis of uncertainty" with their cost/price information. See AR, Tab 4, RFP amend. 5, § L at 20. In this regard, ITT complains that Northrop submitted, and the agency evaluated, the required analysis in connection with the mission capability evaluation factor, maintaining that therefore Northrop's proposal, and the agency's evaluation, failed to comply with the solicitation requirements. Protester's Comments/Supplemental Protest, Oct. 6, 2011, at 65-68. ITT's arguments are variations of its assertion that the agency was required to "upwardly adjust" Northrop's proposed cost/price based on various alleged risks in Northrop's proposal. As discussed above, any risks/uncertainties associated with an offeror's fixed prices were required to be considered in the evaluation of the mission capability factor. The record shows that is exactly what the agency did, and the evaluation included consideration Northrop's "analysis of uncertainty." Accordingly, ITT's complaint that this analysis was required to be submitted and considered with Northrop's cost/price information provides no basis to sustain its protest.

have upwardly adjusted Northrop's proposed costs under CLIN 0012, Northrop's proposal would have remained the technically superior, lower-priced proposal. On this record we decline to further consider ITT's assertions regarding the agency's evaluation of Northrop's proposal with regard to CLIN 0012.

The protest is denied.²⁸

Lynn H. Gibson
General Counsel

²⁸ In pursuing this protest ITT has made various arguments that are in addition to, or variations of, the arguments discussed above, including the assertion that the agency engaged in unequal discussions with Northrop because it conducted discussions with Northrop via electronic mail, but did not engage in similar communications with ITT. We have considered all of ITT's arguments and find no basis to sustain its protest.