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Decision

Matter of: Bart & Associates, Inc.
File: B-407996.5; B-407996.6; B-407996.7
Date: January 5, 2015

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Christian M. Butler, Esq., Department of Homeland Security, U.S. Customs and Border Protection, for the agency.

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DIGEST

1. Protest that agency failed to engage in meaningful and equal discussions with protester is denied where record shows that the agency's multiple rounds of discussions adequately led offeror into all areas requiring revision.
 2. Protest challenging agency's cost realism evaluation is denied where the record demonstrates that the agency's conclusions were reasonable.
 3. Protest challenging the agency's technical evaluation is denied where record shows that the evaluation was reasonable and consistent with the stated evaluation criteria.
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DECISION

Bart & Associates, Inc., of McLean, Virginia, protests the award of a contract to Northrop Grumman Technical Services, Inc. (Northrop), of Herndon, Virginia, under request for proposals (RFP) No. HSBP1012R0026, issued by the Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP), for software application development, modernization, enhancement, and operations and maintenance services for CBP's Passenger Systems Program Directorate (PSPD).

Bart argues that the agency's evaluation of offerors' proposals and the resulting award decision were improper.

We deny the protest.

BACKGROUND

The CBP, a component of DHS, has responsibility for securing the nation's air, land, and sea borders. Statement of Objectives (SOO) § 1.0. The PSPD directorate is the section of the agency's information technology (IT) office responsible for managing the IT applications, which support CBP's traveler vetting and processing systems at U.S. ports of entry. Id. § 4.0.

The RFP, issued on March 28, 2012, contemplated the award of a cost-plus-fixed-fee contract for a base year with four 1-year options.¹ In general terms, the contractor was to provide operations and maintenance (O&M), development, modernization, and enhancement services to support PSPD's suite of computer and automated software applications, as well as maintenance support of selected PSPD specialized equipment. Id. §§ 1.0, 2.0. The specifications also contemplated the development of new capabilities, new applications, and enhancements and modernization of existing applications in response to evolving technologies, threats, and mission requirements. Id. § 1.0.

The RFP established that contract award was to be made on a best-value basis, based on four evaluation factors in descending order of importance: technical; past experience/past performance (hereinafter past performance); small business participation; and cost/price (hereinafter cost). RFP § M.5. The technical factor consisted of five subfactors, also in descending order of importance: technical approach/technical solution (hereinafter technical approach); management approach; sample work assignment (SWA) responses;² quality assurance plan; and transition plan. Id. The noncost factors, when combined, were significantly more important than cost. Id.

Four offerors, including Bart, the incumbent here, and Northrop, submitted proposals by the May 7 closing date. An agency source selection evaluation team (SSET) evaluated offerors' noncost proposals using various adjectival rating

¹ The RFP was subsequently amended ten times. Unless specified otherwise, all references are to the final, conformed version of the solicitation.

² The RFP contained eight SWAs, id. § J.III, and the agency reserved the right to award all, none, or any combination of SWAs to the successful offeror. Id. § M.5. The evaluation of SWA responses was to ensure that the offeror had proposed adequate staffing to achieve its proposed technical solution. Id.

schemes as set forth in the solicitation. For the technical and small business participation factors, proposals were rated as to their quality as follows: outstanding, good, acceptable, marginal, or unacceptable.³ Past performance was rated using a separate rating scheme for both relevancy--relevant, somewhat relevant, or not relevant--and confidence: substantial confidence, satisfactory confidence, no confidence, or unknown confidence (neutral). A separate cost evaluation team (CET) was to evaluate offerors' proposals for both reasonableness and realism. Id.

On January 23, 2013, the agency notified offerors that it had made contract award to Northrop, having found that its proposal represented the best value to the government. Three unsuccessful offerors, including Bart, protested the agency's contract award decision. On March 11, the agency provided notice that it was taking corrective action in response to the filed protests by conducting discussions with offerors, evaluating offerors' subsequent final proposal revisions (FPR), and making a new source selection decision. Agency Report (AR), Tab 182, CBP Email to GAO, Mar. 11, 2013. Based on the agency's announced corrective action, we dismissed the protests as academic. See Bart & Assocs., Inc., B-407996, B-407996.4, Mar. 14, 2013.

Thereafter the CBP reevaluated offerors' proposals. The agency's reevaluation included four rounds of discussions, and the agency's review of revised technical and cost submissions between the discussion rounds. Contracting Officer's Statement, Oct. 27, 2014, at 6-9. Three offerors submitted FPRs by the June 26, 2014, closing date. The agency completed its evaluation of offerors' FPRs, with the final evaluation results of the Bart and Northrop proposals as follows:

³ A separate proposal risk rating--very low, low, moderate, or high--was also to be assigned to offerors' submissions in these areas.

	Bart	Northrop
Technical		
Technical Approach	Good	Outstanding
Management Approach	Acceptable	Outstanding
SWA Responses	Marginal	Outstanding
Quality Assurance Plan	Acceptable	Outstanding
Transition Plan	Good	Outstanding
Overall ⁴	Acceptable	Outstanding
Past Performance	Satisfactory Confidence/ Somewhat Relevant	Substantial Confidence/ Relevant
Small Business Participation	Outstanding	Outstanding
Proposed Cost	\$201,925,957	\$217,674,854
Evaluated Cost	\$215,960,715	\$209,843,044

AR, Tab 154, SSET Evaluation of Bart, Aug. 2014, at 1; Tab 155, SSET Evaluation of Northrop, Aug. 2014, at 1; Tab 159, Bart Cost Realism Analysis, July 1, 2014, at 4-2; Tab 162, Northrop Cost Realism Analysis, Aug. 30, 2014, at 2-7.

The agency evaluators also identified strengths, weaknesses, and risks in support of the adjectival ratings assigned to the offerors' proposals. For example, the SSET identified a total of 10 significant strengths and 7 strengths in support of Northrop's technical ratings, and 1 significant strength, 3 strengths, 3 weaknesses, 3 significant weaknesses, and 4 risks in support of Bart's technical ratings.⁵ AR, Tab 154, SSET Evaluation of Bart, Aug. 2014, at 1-23; Tab 155, SSET Evaluation of Northrop, Aug. 2014, at 1-25.

The SSET also performed a comparative (i.e., head-to-head) analysis of offerors' proposals under each evaluation factor and subfactor. AR, Tab 156, SSET

⁴ Northrop was also rated very low risk for all technical subfactors and overall. AR, Tab 155, SSET Evaluation of Northrop, Aug. 2014, at 1. Bart was rated very low risk for the management approach and quality assurance plan subfactors, and moderate risk for the remaining technical subfactors and overall. AR, Tab 154, SSET Evaluation of Bart, Aug. 2014, at 1.

⁵ The agency evaluators did not assign strengths and weaknesses to offerors' past performance, but developed narrative findings in support of the ratings assigned. AR, Tab 154, SSET Evaluation of Bart, Aug. 2014, at 24-26; Tab 155, SSET Evaluation of Northrop, Aug. 2014, at 26-27.

Comparative Analysis, Aug. 27, 2014, at 1-38. The agency evaluators found Northrop's proposal was both the most highly technically-rated and lowest cost.⁶ Id. at 1-2, 27-37. Accordingly, the SSET was of the opinion that Northrop's proposal represented the best value to the government, and that no cost/technical tradeoff was necessary in making the award determination. Id. at 38.

The agency source selection authority (SSA) reviewed and accepted the ratings and findings of the agency evaluators, including the comparative analysis. AR, Tab 167, Source Selection Decision, Sept. 15, 2014, at 1-5. In her decision, the SSA highlighted many of the unique Northrop features that supported its superior technical ratings. Id. at 3-4. The SSA then found that Northrop's proposal represented the best value to the government, as it was both the most highly technically-rated and lowest cost of all offerors. Id. at 1, 5. Moreover, the SSA found that "even if no adjustments were made and the [costs] were accepted as proposed, [Northrop]'s superior technical solution and past experience/past performance would outweigh the \$15,748,896.43 advantage in Bart's proposed [cost]." Id. at 5.

On September 18, the agency again announced that Northrop had been selected for contract award. Contracting Officer's Statement, Oct. 27, 2014, at 11. On September 25, after the agency provided Bart with a debriefing, Bart filed its current protest.

DISCUSSION

Bart's protest raises numerous issues regarding the agency's evaluation and resulting award decision. First, the protester alleges the agency failed to provide Bart with meaningful and equal discussions. Bart also alleges that the agency's cost realism evaluation of its proposal was unreasonable. Bart also contends that the agency's evaluation of technical proposals was improper. Lastly, Bart alleges that the agency's evaluation of past performance was unreasonable. We have considered all the issues and arguments raised by the Bart protest and, although we do not address them all, find they provide no basis on which to sustain the protest. As Bart's proposal was both lower technically-rated and higher in evaluated cost than Northrop's proposal, the protester cannot demonstrate that it was prejudiced by any of the alleged errors in the agency's evaluation.

Conduct of Discussions

Bart argues that the discussions which the agency conducted during the proposal evaluation process were inadequate and unequal. Specifically, the protester

⁶ The third offeror was higher technically-rated than Bart but not Northrop, while its total evaluated cost was significantly higher than both other offerors. Id. at 2.

alleges that, in certain instances, the agency's discussions failed to adequately alert Bart of concerns that resulted in the assessment of weaknesses under the SWA subfactor. Protest, Nov. 6, 2014, at 51-65. Bart also contends that the agency conducted unequal discussions that substantially favored Northrop.⁷ Id. at 25-31.

The Federal Acquisition Regulation (FAR) requires agencies conducting discussions with offerors to address, “[a]t a minimum . . . deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond.” FAR § 15.306(d)(3). When an agency engages in discussions with an offeror, the discussions must be “meaningful,” that is, sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision in a manner to materially enhance the offeror’s potential for receiving the award. FAR § 15.306(d); Cubic Simulation Sys., Inc., B-410006, B-410006.2, Oct. 8, 2014, 2014 CPD ¶ 299 at 12. The requirement that discussions be meaningful, however, does not obligate an agency to spoon-feed an offeror or to discuss every area where the proposal could be improved. FAR § 15.306(d)(3); Insignia-Spectrum, LLC, B-406963.2, Sept. 19, 2012, 2012 CPD ¶ 304 at 5. Instead, to satisfy the requirement for meaningful discussions, an agency need only lead an offeror into the areas of its proposal requiring amplification or revision. CEdge Software Consultants LLC, B-408203, July 19, 2013, 2013 CPD ¶ 177 at 7.

The agency, after deciding to take corrective action in response to the earlier protests, began by conducting a new evaluation of offerors’ 2012 proposals. This resulted in the SSET developing evaluation reports for each offeror. AR, Tab 37, SSET Evaluation of Bart, Nov. 7, 2013, at 1-14; Tab 38, SSET Evaluation of Northrop, Nov. 7, 2013, at 1-25. The contracting officer then held four rounds of discussions with offerors between February 4 and June 16, 2014. Contracting Officer’s Statement, Oct. 27, 2014, at 4-9. The discussions were not only in writing, but also conducted face-to-face and by teleconference. Id. at 6-9. The discussions were detailed in nature: for example, in the first round of discussions “meetings were each six (6) hours in length in order to allow for a technical and cost discussion between CBP and the offerors.”⁸ Id. at 7. The agency also provided

⁷ Bart also alleged that the agency’s discussions regarding the technical approach subfactor were misleading, and that the discussions regarding the management approach subfactor and the cost realism evaluation were not meaningful. Protest, Oct. 2, 2014, at 55, 65, 76. We consider these arguments abandoned, since CBP provided a detailed response to the protester’s assertions in its report (AR, Oct. 27, 2014, at 9-12), and Bart did not reply to the agency’s response in its comments. See Citrus College; KEI Pearson, Inc., B-293543 et al., Apr. 9, 2004, 2004 CPD ¶ 104 at 8 n.4.

⁸ The agency even held a pre-discussion meeting before the first round of discussions, to go over changes in the RFP, the format of the agency’s evaluation process and timeline, and the expectations for discussions. Id. at 6.

offerors with written discussions in advance of the face-to-face meetings, and offerors had the opportunity to submit questions regarding the discussion issues prior to such meetings. Id. at 6-8. Offerors then submitted proposal revisions (technical and cost) between rounds of discussions. Id. at 7-8. The agency took offerors' discussions responses into account when evaluating FPRs. See, e.g., AR, Tab 154, SSET Evaluation of Bart, Aug. 2014, at 1-30. Relevant to the protest here, the SSET identified three weaknesses, three significant weaknesses, and two risks in Bart's proposal under the SWA responses subfactor, and rated it as marginal/moderate risk. Id. at 11-19.

Bart alleges that the agency's discussions regarding the SWA responses subfactor were inadequate. Specifically, the protester contends that in three instances--i.e., implementation tasks across several SWAs, SWA No. 2, and SWA No. 5--the discussions failed to adequately inform the offeror of the agency's concerns. Protest, Nov. 6, 2014, at 62.

Bart first contends that the agency's discussions regarding the implementation activities for various SWAs (Nos. 1, 4-8) were inadequate. In the second round of discussions, the agency provided Bart with a discussion item regarding the scope of the SWAs generally as follows: "The scope of the SWAs are finalized after the implementation of code. There are no additional duties after implementation. Operations and Maintenance including bug fixes should not be part of the scope of the SWAs. Please address the above detailed scope in the technical response narrative for the SWAs."⁹ AR, Tab 91, CBP Discussions with Bart, May 7, 2014, at 2.

Bart subsequently revised its technical solution for the SWAs without including O&M work. AR, Tab 99, Bart FPR, May 27, 2014, Vol. II, Technical Proposal, at xxxvi. However, Bart also removed the implementation work activities from the SWAs; the protester alleges that it was of the belief that implementation was part of the O&M work. Protest, Oct. 2, 2014, at 37. The SSET subsequently found Bart's failure to adequately include implementation in the SWAs to be a weakness. AR, Tab 154, SSET Evaluation of Bart, Aug. 2014, at 15.

We find the agency's discussions were meaningful, that is, sufficiently detailed so as to lead an offeror into areas of its proposal requiring amplification or revision. Here, the agency's discussions clearly informed Bart that the scope of the SWAs included implementation activities, but not O&M work. We also find Bart's claimed interpretation of the discussion questions--that implementation was actually part of O&M--to be unreasonable, as it is entirely inconsistent with the express language of

⁹ An almost identical discussion item was provided to Northrop. AR Tab 95, CBP Discussions with Northrop, May 7, 2014, at 2.

the discussion item.¹⁰ Having adequately informed Bart that the SWAs included implementation activities, but not operations and maintenance, the agency was not required to do so again. Where an agency has adequately advised an offeror of its concern, there is no requirement that it raise the issue again in subsequent rounds of discussions, even where the issue continues to raise a concern to the agency. USFilter Operating Servs., Inc., B-293215, Feb. 10, 2004, 2004 CPD ¶ 64 at 3.

Bart also alleges that the agency's discussions regarding SWA No. 2 (Secondary Inspection Land Modernization) were inadequate. During the second round of discussions, the agency informed Bart that "[t]here are inconsistencies between the Work Breakdown Structure (WBS) and technical narrative. Please make sure all inconsistencies are addressed." AR, Tab 91, CBP Discussions with Bart, May 7, 2014, at 1. With regard to SWA No. 2, the agency then noted an internal inconsistency regarding incremental deliveries. Id. The SSET subsequently identified as a risk in Bart's proposal an inconsistency between the offeror's SWA No. 2 hours and corresponding technical solution. AR, Tab 154, SSET Evaluation of Bart, Aug. 2014, at 19.

Bart argues that the agency never informed it that its hours for SWA No. 2 were inconsistent with the technical solution, and argues that the assigned risk demonstrates that the agency's discussions here were inadequate. Protest, Oct. 2, 2014, at 40-42. The agency argues that the issue of consistency between the SWA's work breakdown structure and technical narrative was adequately raised in discussions, and that it is not required to spoon-feed an offeror as to each and every issue that could improve its proposal. AR, Oct. 27, 2014, at 8.

We find the discussions here to be adequate. As detailed above, the agency informed Bart that there were inconsistencies between its WBS and technical narrative that needed to be addressed. We find no merit in the protester's argument that every specific inconsistency had to be expressly mentioned in order for the discussions to be adequate. As stated above, an agency is not required to discuss every area where a proposal could be improved, and the scope and extent of discussions is a matter within the contracting officer's discretion. Cornell Cos., Inc., B-310548, Dec. 3, 2007, 2007 CPD ¶ 212 at 4; Northrop Grumman Info. Tech., Inc., B-290080 et al., June 10, 2002, 2002 CPD ¶ 136 at 6 (an agency is not required to

¹⁰ Bart's alleged interpretation of the discussion item is also entirely inconsistent with the language of the RFP, which made implementation part of the SWA requirements. See, e.g., RFP § J.III (SWA No. 4). Any conflict between the requirement as described in the agency's discussions letter (as interpreted by the protester) and the solicitation requirement created a patent ambiguity that should have been filed prior to the submission deadline for revised proposals. 4 C.F.R. § 21.2(a)(1) (2014); Harrington, Moran, Barksdale, Inc., B-401934.2, B-401934.3, Sept. 10, 2010, 2010 CPD ¶ 231 at 5.

advise an offeror of a minor weakness that is not considered significant); see FAR § 15.306(d). Given that the inconsistency between Bart's SWA No. 2 hours and its technical solution was considered to be a risk but not a weakness, which did not affect the marginal rating assigned under the SWA responses subfactor, we do not agree that the agency was obligated to specifically raise this matter in discussions, as the protester alleges.

With regard to SWA No. 5 (Display Warning Banner for Users Entering Terrorist Records in the Treasury Enforcement Communications System (TECS)), the solicitation required a solution to display an informational warning banner to TECS users who are entering "Suspected Terrorist" records. Bart proposed 35 hours to perform the task (5 hours per instance and 7 instances). AR, Tab 73, Bart FPR, Feb. 25, 2014, WBS for SWA No. 5, at 1-2. On this issue, the agency advised Bart that "The offeror's proposed solution exceeds the scope of the SWA. The SWA speaks to person of interest only. Please revise the SWA 5 response to only include within scope work." AR, Tab 91, CBP Discussions with Bart, May 7, 2014, at 2. Bart revised SWA No. 5 and reduced it to 5 hours (one instance). AR, Tab 105, Bart FPR, May 27, 2014, WBS for SWA No. 5, at 1. The agency held two subsequent rounds of discussions and SWA No. 5 was not raised again. In reviewing the final proposals, the SSET found Bart's staffing for SWA No. 5 to be insufficient to perform the required scope of work. AR, Tab 154, SSET Evaluation of Bart, Aug. 2014, at 18-19. Specifically, the evaluators found that Bart had reduced activities that were essential to performing the work including analysis, change request activities to initiate work, independent testing, and implementation tasks. Id. As the SWA required an offeror to show all required planning, design, and testing, the agency evaluators found this to be a significant weakness. Id.

Bart argues the discussions regarding SWA No. 5 were inadequate. While we find the discussions should have included the evaluators' subsequent concern, Bart does not explain what information it would have provided, or how it could have improved its proposal if more detailed discussions had been conducted.¹¹ While discussions must be sufficiently detailed to lead an offeror into the areas of its proposal requiring amplification or revision, Honeywell Tech. Solutions, Inc., B-400771, B-400771.2, Jan. 27, 2009, 2009 CPD ¶ 49 at 10, allegations of inadequate discussions, without more, are not sufficient to demonstrate that the protester was somehow prejudiced. See Nippo Corp., B-402363.2, May 5, 2010, 2010 CPD ¶ 112 at 4 n.4. Here Bart fails to demonstrate how it would have improved its proposal and, in fact, asserts that its proposal included the work which the agency evaluators found missing, such that the assigned weakness was

¹¹ In fact, the same problem exists for all instances of alleged inadequate discussions in this protest: the protester does not explain what information it would have provided or how it could have improved its proposal if more detailed discussions had been conducted.

unreasonable. Protest, Nov. 6, 2014, at 57. Quite simply, Bart fails to demonstrate that it was prejudiced, even if the discussions were inadequate. See Precision Mold & Tool, B-400452.4, B-400452.5, Apr. 14, 2009, 2009 CPD ¶ 84 at 6 n.5.

Bart also argues that the agency's discussions were unequal. Specifically, the protester alleges that the agency "repeatedly" raised the same issues numerous times with Northrop while failing to do the same with Bart.¹² Bart also contends the agency provided unequal discussions to the offerors regarding testing and SWA scope of work. Protest, Nov. 6, 2014, at 25-31.

The FAR requires that discussions not be conducted in a manner that favors one offeror over another, and offerors must be given an equal opportunity to revise their proposals. See FAR §§ 15.306(d)(1), (e)(1); Bannum, Inc., B-409831, July 30, 2014, 2014 CPD ¶ 232 at 4. However, discussions need not be identical among offerors; rather, discussions need only be tailored to each offeror's proposal. Bannum, Inc., *supra*; WorldTravelService, B-284155.3, Mar. 26, 2001, 2001 CPD ¶ 68 at 5-6. Here, as detailed below, we do not find that the agency conducted discussions disparately between the two offerors.

Northrop, in its initial proposal, included labor hours for operation test readiness review (OTRR) in SWAs Nos. 4-7. In the first round of discussions, the agency informed Northrop that: "Operational Test Readiness Review gates are not required for maintenance projects. (SWA Nos. 4, 5, 6, 7)." AR, Tab 50, CBP Discussions with Bart, Feb. 4, 2014, at 1. Northrop subsequently removed OTRR work from SWA No. 5, but not from the other SWAs. In the next round of discussions the agency informed Northrop that: "The offeror's proposal included unnecessary tasks associated with Operational Test Readiness Review (OTRR). . . . Follow our guidance in this issue and remove OTRR from SWA 4, 5, 6, 7, 8." AR, Tab 95, CBP Discussions with Northrop, May 7, 2014, at 1. The contracting officer explains that she raised the OTRR issue a second time with Northrop because the agency had provided offerors with additional technical data which, she believed, caused Northrop to misunderstand the OTRR issue as presented in the initial discussions. Contracting Officer's Statement, Nov. 18, 2014, at 2-3.

We find no merit to Bart's assertion that the agency's discussions were unequal. As a preliminary matter, the protester points to a single instance where the agency raised an issue on a second occasion with Northrop. Moreover, the agency explains that it did so on this one occasion because it believed the discussions may have been misunderstood in light of the additional information provided regarding the agency's requirements. The conduct of the discussions are within the discretion

¹² Although Bart alleges the agency raised several issues numerous times with Northrop, the protester only points to one instance, described herein, where this occurred. Protest, Nov. 6, 2014, at 26-27.

of the agency and we find that the issuance of the second discussion issue regarding OTRR falls within that discretion given the agency's concern about having provided potentially misleading information. While Bart also argues that the agency provided Northrop with specific guidance on how to remedy the OTRR issue, the record reflects multiple instances where the agency used similar, directive language in discussion issues addressed to Bart. See, e.g., AR, Tab 91, Discussions with Bart, May 7, 2014, at 1 ("Please remove additional resumes"); Tab 124, CBP Discussions with Bart, June 16, 2014, at 1 ("Please replace this [WBS content] column with the appropriate information").

Bart also alleges that the agency's discussions were unequal in the amount of information provided to the offerors. Here, the agency's discussions with both offerors stated, "Please ensure all SWA narratives and WBS are updated to reflect a clear delineation between testing efforts conducted by the offeror and testing facilitated and worked by the Government or a third party contractor." AR, Tab 95, CBP Discussions with Northrop, May 7, 2014, at 1; Tab 121, CBP Discussions with Bart, June 9, 2014, at 1. Bart compares the preceding language the agency used in discussing various types of testing with Northrop, to the language used in discussing integration testing with Bart. From a comparison of the length of the discussions here, Bart argues that the agency gave "dramatically different information to both offerors" regarding the same issue. Protest, Nov. 6, 2014, at 27-29.

We find no merit to Bart's assertion. First, the agency's discussions with Bart and Northrop concerned different types of testing that offerors were to clearly delineate in their proposals, and thus, did not represent the same issue. See AR, Tab 95 CBP Discussions with Northrop, May 7, 2014, at 1; Tab 121, CBP Discussions with Bart, June 9, 2014, at 1. Moreover, the agency's discussions with Northrop were largely comprised of definitions for various types of testing. AR, Tab 95, CBP Discussions with Northrop, May 7, 2014, at 1. The record reflects that the agency's discussions were reasonably tailored to the specific issues in each offeror's proposal, and Bart's simplistic comparison of the length of an agency's discussions in this instance does not support its assertion of unequal treatment.¹³

Agency's Cost Realism Evaluation of Bart

Bart protests the agency's cost realism evaluation of its proposal. Specifically, the protester alleges that most of the agency's upward adjustments to Bart's proposed direct labor amounts--\$12.4 million of the total \$14 million cost adjustment--were unreasonable and unequal. Bart argues that a proper cost realism evaluation would

¹³ We also find no merit in Bart's other alleged instance of unequal information.

have resulted in its evaluated cost being significantly lower than Northrop's.¹⁴ Protest, Nov. 6, 2014, at 67-89.

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. Wyle Labs., Inc., B-407784, Feb. 19, 2013, 2013 CPD ¶ 63 at 8; American Tech. Servs., Inc., B-407168, B-407168.2, Nov. 21, 2012, 2012 CPD ¶ 344 at 5; FAR § 15.404-1(d). 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.¹⁵ 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. See Cascade Gen., Inc., B-283872, Jan. 18, 2000, 2000 CPD ¶ 14 at 8. 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 proposed costs are reasonable and realistic in view of other cost information reasonably available to the agency as of the time of its evaluation. See SGT, Inc., B-294722.4, July 28, 2005, 2005 CPD ¶ 151 at 7. We review an agency's judgment in this area to see that the agency's cost realism evaluation was reasonably based and not arbitrary. Hanford Env'tl. Health Found., B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 8. As detailed below, we find Bart's challenge to the agency's cost realism evaluation does not provide a basis on which to sustain the protest.

The RFP specified the various labor categories that offerors were to use when preparing their proposals. RFP § J.IX. Offerors were then instructed to submit their direct labor amounts, direct labor rates, indirect rates (e.g., overhead, fringe benefits, general and administrative costs), and fee based on the RFP's specified labor categories using required cost templates. Id. § J.II. The cost templates included, among other things, breakdowns of offerors' direct labor amounts by performance period, by contract line item number (CLIN), and by SWA. Id.

¹⁴ Bart also alleged the agency's cost realism evaluation of Northrop's labor rates was unreasonable. Protest, Oct. 2, 2014, at 76. As the agency addressed this protest assertion in its report (AR, Oct. 27, 2014, at 11-12; Contracting Officer's Statement, Oct. 27, 2014, at 17), and Bart did not reply to the agency's response in its comments, we consider this argument abandoned.

¹⁵ The end product of a cost realism analysis is the total estimated cost (i.e., most probable cost) that the agency realistically expects to pay for the offeror's proposed effort, and it is the estimated cost and not the offeror's proposed cost that must be the basis of the agency's source selection determination. Magellan Health Servs., B-298912, Jan. 5, 2007, 2007 CPD ¶ 81 at 13 n.13.

Offerors were also required to submit sufficient information to adequately support their proposed direct and indirect costs.¹⁶ Id. § L.11. Similarly, the RFP established that, as part of the cost evaluation factor, CBP would assess the realism of each offeror's proposal. Id. § M.6.

The CET, as part of its evaluation, analyzed the direct labor amounts, direct labor rates, and indirect rates contained in Bart's proposal. AR, Tab 159, Cost Evaluation of Bart, July 1, 2014, at 1-125. Further, the agency prepared a crosswalk connecting the reviews of the cost and technical evaluation teams, "to verify that the offeror's proposed skill mix and level of effort are realistic for the work to be performed, reflect a clear understanding of the contract requirements, and are consistent with the unique methods of performance described in the offeror's technical proposal." Id. at 3-7. Bart's technical approach proposal detailed how it would meet the contract requirements, while the SWA responses (and work breakdown structures) evidenced how the offeror would apply its technical approach to each task. Contracting Officer's Statement, Oct. 27, 2014, at 15. In those instances where the SSET found Bart's SWA staffing to be inconsistent with the offeror's technical solution, it assessed weaknesses. Id. at 15-16. The CET made corresponding upward adjustments to Bart's cost proposal where the proposed SWA staffing was found to be inadequate. Id. at 16. For example, for SWA No. 1, consistent with the SSET's identification of a weakness regarding same, the CET found that Bart's staffing--to implement or move the project to production--was understated, which resulted in an upward adjustment of 39 hours, from 7,978 hours to 8,017 hours. AR, Tab 159, Bart Cost Realism Analysis, July 1, 2014, at 3-3. In sum, the difference between Bart's proposed cost and the CET's evaluated cost were entirely attributable to the adjustments made to the offeror's staffing levels and skill mix for specific sample work assignments reviewed as part of the technical crosswalk. Id. at 3-7.

The protester alleges that the additional hours assessed to its cost proposal for implementation, planning, and deployment activities under various SWAs were unwarranted. The bulk of the agency's upward adjustment, \$8,665,441.35, resulted from its conclusion that Bart proposed insufficient hours for planning and requirements development across all of the SWAs. Bart's protest asserts that the underlying technical evaluation that necessitated the adjustment was flawed. Given that we conclude that the underlying technical evaluation that necessitated this adjustment was not flawed,¹⁷ we deny this protest ground. Since the remaining

¹⁶ The RFP also informed offerors of the frequency with which the SWAs would occur under various CLINs, thereby establishing the solicitation's cost evaluation scheme. Id. § L.11.

¹⁷ The solicitation stated that the evaluation of SWAs would consider whether "the offeror has proposed adequate staffing in the proper labor categories to achieve the proposed technical solution." RFP § M.5. The statement of objectives indicated
(continued...)

three upward adjustments are not sufficient to make Bart's most probable cost lower than Northrop's, we decline to consider those specific allegations since there would be no prejudice even if the challenges were meritorious.

Bart also argues that the agency's cost realism evaluation was unequal, insofar as the agency adjusted Northrop's cost downward for proposing work beyond the scope of what was required but failed to do the same for Bart. Protest, Nov. 6, 2014, at 65-67.

The agency, when performing its cost realism evaluation of Northrop's proposal, generally found the offeror's proposed labor hours, labor rates, and indirect rates, to be realistic for the services to be provided. AR, Tab 162, Northrop Cost Realism Analysis, Aug. 30, 2014, at 2-8. However, with regard to the staffing for each occurrence of SWA No. 3, the agency found that Northrop had included 4,160 labor hours for software code implementation, which was outside of the scope of the work assignment. Id. at 2-12. Based on this determination, the agency made a total downward adjustment to Northrop's proposed cost of \$7,831,810.¹⁸ Id. at 2-7.

The agency's evaluation of Bart's technical proposal found that the offeror had proposed "an enormous amount of testing prior to delivering the [software] code" to the government for independent testing. AR, Tab 154, SSET Evaluation of Bart, Aug. 2014, at 16. The agency evaluators considered Bart's testing activities to be

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that "[t]hese efforts include[d] . . . planning" SOO § 2.1. Bart's technical proposal contained statements indicative of planning activities. For example, Bart proposed a Senior Information Technology Technical Specialist and a Senior Multi-Discipline Software Engineer in its solution for SWA No. 4 whose responsibilities included "[e]nterprise wide planning." AR, Tab 132, Bart FPR, June 26, 2014, Vol. II, Technical Proposal, at 67. However, the agency's evaluation found that Bart's work breakdown structure did not account for the planning efforts described in its technical approach, an issue that the agency raised with Bart in discussions. AR Tab 154, SSET Evaluation of Bart, Aug. 2014, at 14-15, 19. Bart contends that it did in fact propose planning hours in its work breakdown structure, and challenges the agency's evaluation in this regard. Our Office requires that an agency's technical evaluation be both reasonable, in accordance with the solicitation, and adequately documented. Here, the record demonstrates that the evaluation was unobjectionable because the agency reasonably determined that the proposed hours were not adequate based upon Bart's technical approach. See Lynxnet, LLC, B-409791, B 409791.2, Aug. 4, 2014, 2014 CPD ¶ 233 at 9.

¹⁸ In this regard, the agency asserts that the SWA No. 3 language was ambiguous about the intended scope of the work assignment. Contracting Officer's Statement, Oct. 27, 2014, at 17.

redundant of the government's responsibilities, and a duplication of effort that would negatively affect schedule. Id. at 16-18. However, the SSET also found that Bart's testing was an integral part of the offeror's proposed technical approach. For example, Bart's proposed use of its [DELETED]."¹⁹ Id. at 16, citing AR, Tab 131, Bart FPR, June 26, 2014, Vol. II, Technical Proposal, at 10. Similarly, Bart explained that its testing would permit it to "devote time to innovation, continuous improvement . . . and final program level system validation, to include performance, reliability, accuracy, load and scalability." Id. at 16, citing AR, Tab 131, Bart FPR, June 26, 2014, Vol. II, Technical Proposal, at 40.

Bart does not dispute the agency's downward adjustment to Northrop's evaluated cost for efforts found to be beyond the scope of the required work. Rather, the protester argues the agency should have made a similar adjustment to Bart's evaluated cost for proposed testing that was "above and beyond" what was needed to complete the scope of work. Protest, Nov. 6, 2014, at 65.

Our Office has recognized 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 offeror's proposal. See ManTech SRS Techs., Inc., B-408452, B-408452.2, Sept. 24, 2013, 2013 CPD ¶ 249 at 7; Priority One Servs., Inc., B-288836, B-288836.2, Dec. 17, 2001, 2002 CPD ¶ 79 at 3-4. Conversely, however, we have held that where an offeror's proposed costs reflects its technical approach, the agency need not make a downward adjustment. See ManTech SRS Techs., Inc., supra; TriCenturion, Inc.; SafeGuard Servs., LLC, B-406032 et al., Jan. 25, 2012, 2012 CPD ¶ 52 at 15. Moreover, there is no general requirement that an agency's cost realism evaluation "normalize" proposed labor hours where, as here, the varying costs between competing proposals result from different technical approaches. See Honeywell Tech. Solutions, Inc., B-400771, B-400771.2, Jan. 27, 2009, 2009 CPD ¶ 49 at 18-19; Information Ventures Inc., B-297276.2 et al., Mar. 1, 2006, 2006 CPD ¶ 45 at 9.

Here, the record does not show that CBP found Bart's technical approach to reflect a lack of understanding of the requirements in a manner that would result in the offeror incurring fewer costs than it assumed in its technical approach.²⁰ Rather,

¹⁹ Agile software development is a methodology based on iterative and incremental development, where requirements and solutions evolve through collaboration between self-organizing, cross-functional teams. It promotes adaptive planning, evolutionary development and delivery, and encourages rapid and flexible response to change. See, e.g., <http://agilemanifesto.org>; <http://www.agilealliance.org>.

²⁰ Further, the protester has not asserted that it misunderstood the various SWA requirements, such that it would not actually incur the testing hours that it proposed in its technical approach. See Protest, Nov. 6, 2014, at 65-67. In fact, Bart argues
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the record reflects the agency evaluators found Bart's proposed testing efforts were an integral part of the offeror's proposed technical approach. Quite simply, the agency reasonably found that Bart's proposed testing efforts, which the agency viewed as "above and beyond" the requirement, would be incurred, while the costs identified in Northrop's proposal as outside the scope of work, would not. See ManTech SRS Techs., Inc., supra. On this record, we find no basis to conclude that the agency was required to downwardly adjust the protester's evaluated costs.²¹

Technical Evaluation of Northrop

Bart protests the agency's technical evaluation of Northrop in various regards. As described below, the agency's evaluation of Northrop was reasonable and accordingly, we deny Bart's challenge to the technical evaluation.

The evaluation of an offeror's proposal is a matter within the agency's discretion. ManTech SRS Techs., Inc., supra. 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 and applicable procurement statutes and regulations. See Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. In this regard, a protester's mere disagreement with the agency's judgments does not render an evaluation unreasonable. See, e.g., METAG Insaat Ticaret A.S., B-401844, Dec. 4, 2009, 2010 CPD ¶ 86 at 4.

Bart argues that Northrop should not have received an outstanding rating for its quality assurance plan (QAP). Bart claims that Northrop did not include performance standards in its QAP (but acknowledges Northrop did so in the performance work statement annex to the awardee's technical proposal), which in Bart's view, was a mandatory requirement of the solicitation. Protest, Nov. 6, 2014, at 4-8.

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that the agency's evaluation of its testing efforts as excessive was unreasonable. Protest, Nov. 6, 2014, at 47-51.

²¹ Moreover, Bart fails to demonstrate that it was prejudiced. A protestor must demonstrate prejudice, namely that but for the agency's improper action, it would have had a substantial chance of receiving the award. Summit Research Corp., B-287523, B-287523.3, July 12, 2001, 2001 CPD ¶ 176 at 5. While alleging that any downward adjustment for testing hours "would likely be substantial," Protest, Nov. 6, 2014, at 67, Bart fails to establish that the alleged error would make its overall evaluated cost lower than Northrop's.

The solicitation provided two references to performance standards under the RFP's proposal preparation instructions. The first advised:

The offeror's quality assurance plan shall present a comprehensive understanding of U.S. Customs and Border Protection (CBP) Passenger Systems suite of computer and automated software applications program requirements, as well as the proposed Performance Standards.

RFP § L.11. The solicitation also advised that "[t]he offeror is required to submit its Performance Work Statement, a proposed Quality Assurance Plan as well as proposed Performance Standards" Id. Read as a whole, we do not believe that the solicitation mandated--as suggested by the protester--that an offeror include its performance standards within its QAP. Instead, the solicitation required each offeror's QAP to reflect an understanding of the proposed performance standards, describe an approach to ensuring that minimum requirements identified in the offeror's performance standards are meeting the acceptable quality levels proposed, and describe the remedial action to be taken in the event that an element in the performance standards fails to meet the acceptable quality levels identified. Id. In sum, we disagree with Bart that actual performance standards are a requirement to be included in the QAP.²²

Bart also argues that agency unreasonably assigned Northrop an outstanding rating for its transition plan. Bart claims that Northrop proposed a "far more aggressive plan than the plan permitted by the RFP" insofar as Northrop proposed to complete transition within 30 days.²³ Protest, Nov. 6, 2014 at 32-41. Specifically, Bart believes that the agency should have downgraded Northrop's proposal for two reasons that, in Bart's view, made achievement of a 30-day transition impossible. First, Bart contends that Northrop cannot possibly meet its goal of 90% incumbent capture given Bart's belief that "Northrop Grumman's proposed labor rates would require numerous incumbents to take pay cuts." Protest, Nov. 6, 2014, at 34. Second, Bart asserts that the agency should have assigned a risk to Northrop's proposal since it would involve the training of the incumbent workforce in a new methodology, the same reason for which the agency believed that Bart's transition plan presented a schedule risk.

²² Even assuming arguendo that performance standards were required to be included in an offeror's QAP, Bart's allegation that Northrop's proposed performance standards do not include a standard for system availability also lacks merit, as this was similarly not an actual solicitation requirement.

²³ While the solicitation requirement was a 90-day transition period, Bart proposed a 59-day transition period, for which it received a significant strength. AR Tab 154, SSET Evaluation of Bart, Aug. 2014, at 22.

The solicitation stated that the transition plan was to “be evaluated to assess the offeror’s approach and ability to assume full contractual responsibility in minimum time for the entire proposed PWS without degradation of high quality services.” RFP § M.5 at 162. In evaluating Northrop’s proposal, the agency considered Northrop’s stated intent to hire incumbent personnel. The agency also considered Northrop’s mitigation plan to transition other Northrop employees in the area to the contract as necessary, as well as Northrop’s experience in incumbent hiring on previous contracts, which was set forth in its proposal. AR Tab 155, Northrop Consensus Evaluation, at 23. The record demonstrates that the agency also considered Northrop’s compensation plan and retention bonus program for incumbent employees as well as Northrop’s narrative and supporting rationale. Id.

Notwithstanding the agency’s thorough analysis of this issue, Bart contends that Northrop cannot hire incumbent personnel given its proposed salaries. This, however, is not dispositive as to whether incumbent personnel will actually accept Northrop’s offers of employment. Accordingly, we find no basis to question the agency’s evaluation of Northrop’s transition plan.²⁴ While Bart asserts that the agency’s evaluation was unreasonable, due primarily to the labor rates reflected in Northrop’s proposal, its arguments reflect mere disagreement with the agency’s judgment, and provides no basis to sustain this protest.²⁵ IBM U.S. Fed., a division of IBM Corp.; Presidio Networked Solutions, Inc., B-409806 et al., Aug. 15, 2014, 2014 CPD ¶ 241 at 18.

Technical and Past Performance Evaluation of Bart

Bart argues that the agency evaluation of its proposal under the technical and past performance factors was improper. The protester essentially alleges that: the identified weaknesses were unreasonable; the agency improperly failed to identify additional strengths present in the offeror’s submission; and that Bart proposed

²⁴ Bart’s challenge to Northrop’s rating under the transition plan subfactor for its use of tailored Agile development also lacks merit, as Northrop did not propose to implement a change to the current operating environment during the transition period. See AR, Tab 140, Northrop FPR, June 26, 2014, Vol. II, Technical Proposal, at 138. Whether Northrop proposed these changes after the close of transition period is immaterial to the evaluation of its transition plan.

²⁵ Bart also challenges the agency’s evaluation of Northrop’s past performance. We again find the protester has not established prejudice here. First, the record reflects that the SSA gave little if any emphasis to Northrop’s higher past performance rating when making her best value determination. AR, Tab 167, Source Selection Decision, Sept. 15, 2014, at 3-5. At best, Bart’s past performance would be equal to Northrop’s, and Northrop is higher rated under the more important technical factor as well as lower cost.

features identical to Northrop but received lower ratings. Protest, Oct. 2, 2014, at 15-87; Protest, Nov. 6, 2014, at 4-65. We need not address these aspects of Bart's protest, however, because Bart fails to demonstrate that it was prejudiced from the evaluation errors it alleges.

Competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest. Swets Info. Servs., B-410078, Oct. 20, 2014, 2014 CPD ¶ 311 at 14; see Statistica, Inc. v. Christopher, 102 F.3d 1577 (Fed. Cir. 1996).

Here, even if all the weaknesses which Bart challenges were eliminated, Bart would, at best, be rated technically equal to Northrop and remain higher cost.²⁶ As Northrop would remain lower in cost among technically equal offerors, it would continue to represent the best value to the government. See AR, Tab 167, Source Selection Decision, Sept. 15, 2014, at 3. In sum, we find the agency's evaluation of Bart's technical and past performance proposals provides no basis on which to sustain the protest.

The protest is denied.

Susan A. Poling
General Counsel

²⁶ For example, even if Bart's technical proposal was rated as outstanding for each subfactor and overall, it would then be rated equal to Northrop, which received the highest rating possible. The same would be true as to past performance factor: even if Bart received the highest, substantial confidence rating, it would then be equal to Northrop.