



GAO

Accountability \* Integrity \* Reliability

Comptroller General  
of the United States

United States Government Accountability Office  
Washington, DC 20548

**DOCUMENT FOR PUBLIC RELEASE**

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

## Decision

**Matter of:** HP Enterprise Services, LLC; Aon National Flood Services

**File:** B-413967; B-413967.2; B-413967.3; B-413967.4; B-413967.5;  
B-413967.6; B-413967.7

**Date:** January 17, 2017

---

Scott A. Freling, Esq., Jason N. Workmaster, Esq., Julia A.C. Lippman, Esq., and Kevin T. Barnett, Esq., Covington & Burling LLP, for HP Enterprise Services, LLC, and Daniel R. Forman, Esq., Adelicia Cliffe, Esq., Olivia L. Lynch, Esq., Judy Choi, Esq., Elizabeth Buehler, Esq., and M. Yuan Zhou, Esq., Crowell & Moring LLP, and Steven Catlett, Esq., Aon plc, for Aon National Flood Services, the protesters. Michael J. Schaengold, Esq., Ryan C. Bradel, Esq., Melissa Prusock, Esq., Jozef S. Przygodzki, Esq., and Danielle K. Muenzfeld, Esq., Greenberg Traurig LLP, and Kenneth G. Fall, Esq., Marsh & McLennan Companies, for Torrent Technologies, Inc., the intervenor.

John Cho, Esq., Bradford Ramos, Esq., Erik Claudio, Esq., and Lindsay Stoudt, Esq., Department of Homeland Security, for the agency.

Robert T. Wu, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

### DIGEST

1. Protests challenging various aspects of the evaluation of protesters' and awardee's technical and past performance proposals are denied where the record shows that the evaluations were reasonable and in accordance with the stated evaluation criteria, and despite an error in the past performance evaluation, the protester cannot show a reasonable possibility of prejudice.
2. Protests that the agency engaged in misleading and unequal discussions are denied where the record shows that discussions were equal, and while the record shows that discussions were misleading with respect to one protester, the record does not support the conclusion that there was a reasonable possibility of prejudice to the protester.
3. Protests that the agency's price reasonableness evaluation was unreasonable are denied where the record shows that the evaluation was credible, adequately documented and reasonable.

4. Protest that the agency failed to consider and resolve awardee's alleged organizational conflict of interest (OCI) is denied where the record shows that, while the agency did not identify an OCI during its evaluation of proposals, its post-award explanation and analysis is reasonable.

---

## **DECISION**

HP Enterprise Services, LLC (HPES), of Herndon, Virginia, and Aon National Flood Services, of Kalispell, Montana, protest the award of a contract to Torrent Technologies, Inc., of Kalispell, Montana, under request for proposals (RFP) No. HSFE60-16-R-0004, issued by the Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), for direct servicing agent services in support of the National Flood Insurance Program. Aon, the incumbent contractor, argues that the agency improperly evaluated proposals, conducted unequal and misleading discussions, and arrived at an unreasonable best-value tradeoff decision. HPES also argues that the agency improperly evaluated proposals, and unreasonably failed to consider what it alleges was Torrent's unmitigable organizational conflict of interest.

We deny the protests.

## **BACKGROUND**

FEMA, and its Federal Insurance and Mitigation Administration (FIMA), manage the National Flood Insurance Program (NFIP), which makes flood insurance available to residents and businesses of participating communities that commit to sound floodplain management practices. The NFIP sells and administers standard flood insurance policies either through an arrangement with private "Write Your Own" (WYO) insurance companies or, at issue here, through a contract with an entity that directly sells and services NFIP policies, the NFIP Direct Servicing Agent (DSA). The DSA contractor administers approximately 688,000 flood insurance policies on behalf of the NFIP, or approximately 20 percent of the 3.5 million policies in effect. Contracting Officer's Statement at 1. The DSA contractor serves as an insurer of last resort by selling policies through insurance agents not otherwise affiliated with a WYO company, and performs other specialized services. HPES Agency Report (AR), exh. RR, FEMA Branch Chief for the DSA, at 3.

The RFP, issued on July 22, 2016, pursuant to Federal Acquisition Regulation (FAR) part 12 procedures for the acquisition of commercial items, sought proposals for an indefinite-delivery, indefinite-quantity (IDIQ) contract to provide DSA services over a 12-month base period and up to three 12-month option periods. Fixed-price task orders are to be issued under the contract; the first of which will be concurrent with award of the contract. RFP at 1. The contract is to have a guaranteed minimum of \$10,000, and a maximum value of \$97.5 million. *Id.* at 2.

Award was to be made to the offeror whose proposal was most advantageous to the government, considering price and the following non-price factors listed in descending order of importance: Factor 1 - deliver quality, customer-focused direct servicing operations in a cost-effective and timely manner; Factor 2 - customer experience; Factor 3 - provide secure, government-approved information technology solutions; Factor 4 - staff capability and program knowledge; Factor 5 - past performance; and Factor 6 - small business participation. Id. at 43. All technical factors, when combined, were to be moderately more important than price; as technical difference narrowed between offers, price was to become more important. Id. The RFP instructed offerors that, in making its best-value determination, the government was more concerned with obtaining a superior solution to achieve the RFP's Statement of Objective (SOO) requirements than in making award to the offeror with the lowest price. Id. at 44.

Price was to be evaluated for completeness and reasonableness, based on a total price proposed for contract line item numbers (CLIN) detailed in the RFP's price schedule. Id. at 46. While the contract was to have a maximum value of \$97.5 million, the agency instructed offerors that, for evaluation purposes:

The evaluated price may exceed the IDIQ ceiling of \$97.5M. The quantities used are for evaluation purposes only. Actual quantities will vary. The evaluated total price will not be incorporated into the contract. Only the proposed unit prices and fixed priced CLIN amounts provided on the price worksheet will be incorporated into the contract.

RFP, Amendment 2, Attachment D, at 2.

The agency received proposals from Aon, HPES, and Torrent by the August 17 closing date. All three were initially found to be unacceptable. AR, exh. 40, Final Technical Evaluation Report, at 6. The agency entered into discussions and provided each offeror a list of all identified deficiencies, significant weaknesses, and weaknesses. After receiving and evaluating revised proposals, the agency again opened discussions after identifying a new deficiency in Aon's proposal that only became apparent when reviewing the firm's initial discussion responses. Id. The final evaluation results, supported by a detailed narrative and analysis, were as follows:

	<b>Aon</b>	<b>HPES</b>	<b>Torrent</b>
Factor 1 Direct Servicing Operations	Acceptable 4 Strengths 3 Weaknesses	Good 5 Strengths 1 Weakness	Excellent 5 Significant Strengths 9 Strengths
Factor 2 Customer Experience	Acceptable 1 Strength 3 Weaknesses 1 Significant Weakness	Good 1 Significant Strength 5 Strengths 1 Weakness	Good 4 Strengths
Factor 3 IT Solutions	Acceptable	Good 1 Strength	Excellent 3 Significant Strengths 1 Strength
Factor 4 Staff Capability	Good 2 Strengths 1 Weakness	Good 5 Strengths 1 Weakness	Good 2 Strengths 1 Weakness
Factor 5 Past Performance	Satisfactory	Satisfactory	Satisfactory
Factor 6 Small Business Participation	Good 1 Strength	Excellent 2 Significant Strengths 1 Strength	Acceptable
<b>Technical</b>	Acceptable	Good	Excellent
<b>Price</b>	\$74,976,611	\$85,125,254	\$102,039,191

AR, exh. 41, Source Selection Decision Document (SSDD), at 8-9.

The source selection authority (SSA) adopted the findings of the technical evaluation team (TET) and conducted a detailed comparison between Torrent’s proposal and the proposals of both HPES and Aon under each technical factor, as well as a price-technical tradeoff under all factors and overall. See generally, id. The SSA concluded that Torrent’s proposal provided the best overall value to satisfy the NFIP’s need for a DSA contractor and that only Torrent significantly exceeded the SOO requirements. Id. at 7. He went on:

Torrent proposes innovative, customer-focused solutions that will save the Federal Government money over time, and demonstrated its excellent understanding of how to deliver its solutions in a secure, Government-approved [information technology] environment. Torrent therefore presents a superior solution for the Government that will marry technology and subject matter expertise to maximize the effectiveness and efficiency of delivering flood insurance as the DSA.

\* \* \* \* \*

Over the last nearly two years, FIMA has paid out tens of millions of dollars to settle litigation and address claims adjustment issues that

stemmed from Superstorm Sandy. In light of the renewed focus on the quality of flood insurance delivery and the customer experience, especially as it relates to the DSA as an extension of the Federal Government, FIMA values a superior technical solution. My integrated assessment of all the proposals in accordance with the specified evaluation factors shows that Torrent's proposal offers the best value to the Government. Torrent's proposal has minimal performance risks to the Government at a reasonable price. . . .

Id. at 26. The SSA specifically found that the technical merits of Torrent's proposal warranted paying a price premium of 19.9 percent over HPES' proposal and 36.1 percent over Aon's proposal. Id. at 17, 25. Both Aon and HPES were notified of the award decision and provided debriefings; these protests followed.

## DISCUSSION

Aon and HPES protest various aspects of the agency's evaluation and award decision. Aon challenges the assignment of various weaknesses in its technical proposal and alleges that the agency treated the offerors disparately by failing to recognize at least two strengths in its proposal that were assigned to Torrent's proposal. Aon Supp. Protest at 39-56. HPES challenges the assignment of two weaknesses to its proposal. HPES Protest at 13-16. Aon also argues that the agency engaged in unequal discussions that favored Torrent, while HPES argues that the agency conducted misleading discussions. Aon Supp. Protest at 10-23; HPES Protest at 10-13. Both protesters argue that the agency improperly evaluated Torrent's price as reasonable. Aon Protest at 60-62; HPES Second Supp. Protest at 7-8. Aon additionally protests the evaluation of both firms' proposals under the past performance factor, arguing that the agency failed to properly recognize its own performance and overestimated the value of Torrent's past performance. Aon Protest at 52-60. Finally, HPES argues that the agency unreasonably failed to consider what it alleges was Torrent's unmitigable organizational conflict of interest (OCI). HPES Supp. Protest at 9-12. We have considered the protesters' arguments and find no basis to sustain the protest.<sup>1</sup>

### Technical Evaluation

Aon challenges various aspects of the evaluation of its proposal, including two weaknesses assigned to its proposal under Factor 1, one significant weakness under Factor 2, and one weakness under Factor 4. Aon also alleges that the

---

<sup>1</sup> While we do not address all of the protesters' arguments in this decision, we have considered each and find no basis to sustain the protest. We also note that, in its initial protest and first supplemental protest, Aon raised various other challenges to the technical evaluation of proposals that were subsequently withdrawn.

agency engaged in disparate treatment by failing to recognize at least two strengths in its proposal that were assigned to Torrent's proposal. HPES challenges the assignment of two weaknesses to its proposal, one under Factor 1 and the other under Factor 2.

The evaluation of an offeror's proposal is a matter within the agency's discretion. Kellogg Brown & Root Servs., Inc., B-400614.3, Feb. 10, 2009, 2009 CPD ¶ 50 at 4. 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. Triple Canopy, Inc., B-310566.4, Oct. 30, 2008, 2008 CPD ¶ 207 at 7. Our review of the record provides us no basis to question the evaluation.

### Aon Technical Proposal

Factor 1 concerned the delivery of quality, customer-focused direct servicing operations in a cost-effective and timely manner. Among the areas to be evaluated was how effectively the offeror's proposed performance work statement met all SOO objectives. RFP at 44. Aon was assigned a "collective weakness" because the agency found that several areas in its proposal failed to demonstrate how it would provide services on behalf of the federal government as required by the SOO. In this regard, SOO ¶ 4.1.1.1 required the DSA contractor to deliver its services on behalf of the federal government, and the SOO generally required the contractor to collaborate with and understand other relevant programs with the DHS, FEMA, and FIMA.

The record shows that the agency was concerned with Aon's failure to demonstrate knowledge and understanding of not just the NFIP, but also of FIMA, FEMA, and DHS, and set forth detailed examples illustrating this concern. AR, exh. 40, Final Technical Evaluation Report, at 8-9. Aon's challenge to this weakness primarily consists of its citing areas of its proposal where it generally states it has strong knowledge and understanding of NFIP, FIMA, FEMA, and DHS, and various instances in its proposal where it discussed such knowledge. Aon Comments at 45-47. However, in our view, these general statements do not provide any basis to question the agency's well-supported concerns about the specifics of the proposal and the implications for Aon's performance.

Aon's proposal was assigned another weakness because FEMA found its proposed "[DELETED] staffing model" too vague for the agency to ascertain how it worked or whether it accomplished the SOO objectives. The agency was concerned that the proposal did not make it clear how the [DELETED] worked, or what triggered something going from one [DELETED] to the next, or how issues progressed through [DELETED]. Id. at 9. Aon's argument that its proposal did explain why it used a [DELETED] staffing model and how it was divided does not address the

agency's concern, which was primarily how the model worked so that an assessment could be made of its ability to accomplish the SOO objectives.

Under Factor 2, customer experience, Aon's proposal was evaluated as having a significant weakness related to the effectiveness of its continuous improvement procedure in terms of timing and governance of policyholder surveys. *Id.* at 11. Among other things, the TET was concerned about potential burdens caused by the need to comply with the Paperwork Reduction Act and other procedural requirements, and the adequacy of Aon's "proposed workaround." *Id.* Aon responds that the agency ignores the fact that surveys have been previously used by the program, and not all surveys are subject to the Paperwork Reduction Act. Aon Comments at 53. Aon's point is not responsive to the agency's concern over the firm's apparent general lack of understanding of the legal and procedural requirements at issue, and provides no basis to question the evaluation.

Under Factor 4, staff capability and program knowledge, Aon's proposal was evaluated as having a weakness because the information technical positions it listed "failed to explicitly show who would fill certain key roles (i.e., system architect), which introduces some risk to the Federal Government." AR, exh. 40, Final Technical Evaluation Report, at 12. Aon argues that this weakness was improperly assigned because the RFP only required offerors to propose specific personnel for certain positions, which did not include the system architect. Aon Comments at 54. However, the agency did not criticize Aon's proposal for failing to identify an individual by name for this position, as Aon suggests. Taken in context, we read the agency's assessment as criticizing the proposal for failing to identify which of the information technology positions listed in Aon's staffing plan would perform "certain key roles" in the scope of work. As a result, we find no basis to question the evaluation.

Finally, Aon argues that the agency assigned two strengths to Torrent's proposal, one for its use of call center data and one for its backup and recovery solution, which should also have been assigned to Aon's proposal for having commensurate strengths. Supp. Protest at 39-43. Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences in the proposals. See Northrop Grumman Sys. Corp., B-406411, B-406411.2, May 25, 2012, 2012 CPD ¶ 164 at 8. Aon has not made this showing because, in both instances the record shows apparent differences between the firms' proposals that support the assignment of the strengths to Torrent's proposal, but not to Aon's.

With respect to the call center data strength, assigned to Torrent's proposal under Factor 2, a review of the proposals shows that the firms' approaches were different. The contracting officer explains that Torrent proposed collection and use of data on such things as [DELETED]. Contracting Officer's Supp. Statement at 2. The agency believed that this data collection could lead to insights that could help the

customer experience and allow for customizable, targeted solutions. AR, exh. 40, Final Technical Evaluation Report, at 21. A review of Aon's proposal does not show a plan to collect similar data. With respect to the backup and recovery solutions strength, assigned to Torrent's proposal under Factor 3, the contracting officer explains, "Aon's technology was inferior when compared to that of Torrent. In addition, Torrent's proposed IT solution was overall superior when compared to Aon AFS. Torrent had a more robust and also more responsive backup system which backed up and delivered data quicker and more frequently." Contracting Officer's Supp. Statement at 2. Our review of the record affords us no basis to object to the agency's assignment of this strength to Torrent's proposal, but not to Aon's.

### HPES Technical Proposal

Under Factor 1, HPES' proposal was assigned a weakness for not explaining how the firm would undertake catastrophic planning for the surge requirements, which the agency found created the potential for delayed or inconsistent services during a disaster. AR, exh. 40, Final Technical Evaluation Report, at 14; exh. 41, SSDD, at 12. HPES argues that the evaluation ignores the comprehensive response in its proposal, and references a specific section in support of its contention. HPES Protest at 14. Moreover, HPES argues that this section of its proposal was unchanged from the firm's initial proposal, yet the agency did not raise any specific issues in this regard despite multiple rounds of discussions. Id.

The agency responds that, after the initial evaluation of proposals, HPES received a deficiency under Factor 1 for lacking specificity in its proposal and for largely restating parts of the SOO, which the agency asserts applied to this assigned weakness as well. Legal Memorandum at 10. The agency asserts that it reasonably placed HPES on notice of this weakness and was not required to spoon-feed offerors. Id. at 10-11. HPES, in its comments, simply responds that the agency "quibbles" with the amount of detail in its proposal, but stands by its assertion that HPES provided a comprehensive discussion and did not merely "parrot back" the language of the SOO. HPES Comments at 10.

Our review of the record in light of HPES' arguments does not lead us to question the agency's evaluation. In this regard, HPES points to a portion of its proposal and specifically, the following language to support its contention that the assigned weakness was unreasonable, "[DELETED]." AR, exh. JJ, HPES FPR Vol. 1, Attachment 1, at 20. However, a review of this section of HPES' proposal does not cause us to question the agency's concern that the firm's proposal had performance risk because it didn't adequately explain how it would undertake catastrophic planning as the DSA.

HPES also challenges the assignment of a weakness to its proposal under Factor 2 for the firm's continuous improvement process and the lack of a collaborative approach for one of the proposed boards. HPES Protest at 15-16. HPES argues

that the weakness was unreasonable because the firm addressed the agency's identified concerns during discussions and the board proposed was "an exemplar recommendation" and not an integral or unalterable aspect of HPES' proposed solution. Id. at 15-16. The agency responds, in essence, that even after discussions HPES' response was vague, particularly in terms of identifying engaged customers and legal concerns about the collection of information. Legal Memorandum at 13-14. Notwithstanding the agency's response, HPES argues it was unreasonable to penalize the firm for something that was optional, and which the agency could choose not to implement. HPES Comments at 10-11. However, even if the agency could choose not to implement portions of HPES' solution, we are provided no basis to question the agency's decision to evaluate and have concerns with HPES' proposal.

### Unequal/Misleading Discussions

Aon argues that the agency engaged in unequal discussions in two respects. First, Aon takes issue with the agency informing Torrent that its price exceeded the independent government cost estimate (IGCE) without also informing Aon of its own price relative to the IGCE. Next, Aon argues that the agency improperly "spoon fed" Torrent by repeatedly raising an alleged weakness in its proposal under Factor 6, small business participation, while not also raising again Aon's own continuing weaknesses under other factors in later rounds of discussion.

In conducting discussions with offerors, agencies may not engage in what amounts to disparate treatment of the competing offerors. Front Line Apparel Group, B-295989, June 1, 2005, 2005 CPD ¶ 116 at 3-4. In this regard, when holding discussions, procuring agencies are not permitted to engage in conduct that favors one offeror over another. FAR § 15.306(e)(1). An agency must, at a minimum discuss 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). Additionally, a contracting officer may, in his or her discretion, inform an offeror that its price is considered by the government to be too high, or too low, and reveal the results of the analysis supporting that conclusion. FAR § 15.306(e)(3).

The agency states that the difference in the price discussions with Aon and Torrent "are solely attributable to the differences in their proposals, and not to unequal treatment." Supp. Legal Memo. at 3. The agency states that its sole purpose in discussing the IGCE with Torrent was to attempt to obtain a more competitive price from its technically superior proposal, and since Aon's price was below the IGCE, informing it of the IGCE amount would serve "no useful purpose." Id. Our review of the record gives us no basis to question the agency's actions.

Discussions need not be identical among offerors; rather, discussions need only be tailored to each offeror's proposal. See FAR §§ 15.306(d)(1), (e)(1);

WorldTravelService, B-284155.3, Mar. 26, 2001, 2001 CPD ¶ 68 at 5-6. As the evaluation scheme only permitted the evaluation of price for reasonableness--that is, whether the price was too high--it was reasonable for the agency to discuss with Torrent its price with the stated objective of obtaining a more competitive price. Such discussions were reasonably tailored to the circumstances of Torrent's proposal. Conversely, Aon proposed a price well below the IGCE, and therefore informing the firm of its price relative to the IGCE would not reasonably lead the firm to make its price proposal more competitive.

Aon also argues that the agency engaged in unequal discussions by continuing to raise concerns about Torrent's subcontracting plan in later rounds of discussions, even after determining the plan acceptable after the initial round of discussions, but not similarly raising Aon's various weaknesses under other factors in later discussions. The record shows that the agency raised concerns in both rounds of discussions about both Aon and Torrent's proposals under Factor 6, and specifically concerns about both proposals meeting veteran-owned small business subcontracting goals. See AR, exhs. 18, 29, 48, 49, Torrent and Aon Discussion Letters. Where the agency continued to raise the same concern with both Aon and Torrent in later discussions, we are not convinced that discussions were unequal or unfair. Moreover, even if the agency had continued to raise this issue with only Torrent, we do not see why the agency should be required to raise anew all of the weaknesses it initially raised with Aon that were not resolved by the firm in its subsequent proposal revisions. See Bart & Assocs., Inc., B-407996.5 et al., Jan. 5, 2015, 2015 CPD ¶ 61 at 10-11 (discussions were reasonably tailored to offerors' proposals and were not unequal where the agency repeated concerns with both firms in multiple rounds of discussions even though not raising the same issues with both).

HPES argues that the agency engaged in misleading discussions when it informed the firm that its proposed price of approximately \$94.2 million was considered too high in comparison to other offerors when the record shows that its price was only higher than Aon's, not Torrent's. Second Supp. Protest at 4-6. Moreover, HPES asserts that, at the time of the first discussions, cutting its own price could not have improved its competitive standing as the firm's proposal was already lower-priced than Torrent's and Aon's proposal was not technically acceptable. HPES concludes that in order to reduce its price in response to discussions, it had to reduce its proposed staffing model. Had it not reduced its staffing, HPES asserts it would have been in a stronger position with respect to Torrent in the best-value tradeoff decision.

While asserting that discussions were meaningful and adequate, the agency primarily argues that HPES was not prejudiced by the discussions. Legal Memorandum at 5. The record does show that HPES' price was not higher than both other offerors, but only Aon's. For this reason, the discussions with HPES were not factually accurate. However, we agree with the agency that the record

does not support the conclusion that HPES was prejudiced by this error. According to the agency, even if HPES reduced its staffing model, this change did not negatively impact the firm's technical evaluation--no weakness was assigned and its adjectival rating did not change for any evaluation factor. Legal Memorandum at 5. HPES responds that it is irrelevant whether the reduction in staffing was recognized as a weakness or a deficiency; for purposes of showing prejudice HPES asserts that it need only show that but for the misleading and inaccurate discussions, the firm's final technical and price proposals would have been different. HPES Supp. Comments at 4.

Competitive prejudice is an essential element of a viable protest; we resolve any doubts regarding prejudice in favor of a protester since a reasonable possibility of prejudice is a sufficient basis to sustain a protest. Intelsat General Corp., B-412097, B-412097.2, Dec. 23, 2015, 2016 CPD ¶ 30 at 19-20. Our review of the record confirms the agency's position in that there is no evidence that the agency treated HPES' reduced staffing negatively as a function of the technical evaluation. In this regard, other than its staffing model, as previously discussed, HPES does not point to, and our review does not show, any portion of its technical approach that was materially changed in response to this discussion question, and the record does not show that HPES' technical standing was adversely impacted by the reduction in staffing.

Moreover, it does not follow that HPES would have improved its technical standing without the misleading discussions. For instance, if the discussion letter had accurately represented to HPES that its proposal was higher than just one offeror (i.e., Aon), we have no basis to conclude that HPES would have improved its technical solution so as to be more competitive against Torrent in the best-value tradeoff analysis. If anything, given that the agency did not view HPES' staffing reductions negatively as a function of its technical proposal, HPES' reduced price only enhanced its proposal vis-à-vis Torrent in the tradeoff decision. In sum, we conclude that despite the factual inaccuracy in discussions, HPES cannot show that it was prejudiced.

#### Price Reasonableness

Both HPES and Aon argue that the agency's price reasonableness determination of Torrent's proposal was unreasonable, unsupported by the record, and challenge the adequacy of the documentation of the price analysis. Aon also challenges the reasonableness of the IGCE used by the agency as part of its price analysis. We have reviewed each of these contentions and find them to be without merit.

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. Triple Canopy, Inc.,

supra, at 7. Here, price was to be evaluated for completeness and reasonableness, based on a total price proposed for CLINs detailed in the price schedule. RFP at 46. The FAR permits the use of various price analysis techniques and procedures to ensure fair and reasonable pricing, including the comparison of proposed prices to each other, to prices found reasonable on previous purchases, or to an independent government estimate. FAR § 15.404-1(b)(2); Comprehensive Health Servs., Inc., B-310553, Dec. 27, 2007, 2008 CPD ¶ 9 at 8.

As an initial matter, the supplemental pleadings in Aon's protest focus significantly on issues related to the agency's initially incorrect IGCE, which was later corrected in a supplemental report. The agency explains that it inadvertently provided a draft IGCE in the initial agency report that was not used to conduct the price evaluation. The final IGCE that was used for the price evaluation was provided in the supplemental agency report. Second Supp. Contracting Officer's Statement at 1.

In our view, the agency's final IGCE, as well as the price analysis report, provide an adequate basis for our Office to review the reasonableness of the agency's price analysis. See AR, exh. 39, Final Price Evaluation; exh. 46, Final IGCE. Contrary to Aon's contention, the record is credible and adequately documented. The price analysis report and the IGCE provide details on the price components of the IGCE, and why those components were utilized (such as utilization of weighted averages based on historical usage date to calculate the number of policies for evaluation purposes). The price analysis report also explains the rationale for why the RFP and IGCE used a particular pricing structure, specifically to address requests for equitable adjustment on prior contracts due to variable costs when the number of policies changed. AR, exh. 39, Final Price Evaluation, at 3. Moreover, while the IGCE and price evaluation report do not provide data underlying the various price components of the IGCE, we defer to the agency's judgment and expertise in formulating and utilizing this pricing model for price evaluation purposes. See Bart & Assocs., Inc., supra, at 11-13.

Finally, with respect to the substance of the evaluation, the record shows that the agency conducted its price analysis based on adequate price competition and comparison to an IGCE. AR, exh. 39, Final Price Evaluation, at 4. The record also shows that while the agency viewed Torrent's price as high compared to other offerors and the IGCE, it found the awardee's proposed price to be reasonable based on use of two of the price techniques delineated in the FAR.<sup>2</sup> Id. As such,

---

<sup>2</sup> Aon argues that the contracting officer found Torrent's initial price to be unreasonable, and further argues that it was irrational for the agency to conclude that Torrent's "mere" two percent reduction to derive its final price from its initial price was fair and reasonable. Protester's Supp. Comments at 10. However, the record does not support the contention that the contracting officer found Torrent's initial price to be unreasonable, but instead found it too high in comparison to the

(continued...)

we are provided no basis to question the reasonableness of the agency's price evaluation or its conclusion that Torrent's price was reasonable.

### Past Performance

Aon argues that the evaluation of both its own past performance and that of Torrent's was unreasonable. The protester argues, in essence, that it was unreasonable to assign it a satisfactory rating given its experience and record of performance, especially as the incumbent contractor; unreasonable for the agency to assign Torrent a satisfactory rating based on the firm's lack of relevant experience; and unreasonable for the SSA to conclude that there were no meaningful differences between the two firms' past performance. Protest at 52-60.

Our Office examines an agency's evaluation of past performance to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations; however, the necessary determinations regarding the relative merits of offerors' proposals are primarily matters within the contracting agency's discretion. Advanced Env'tl. Solutions, Inc., B-401654, Oct. 27, 2009, 2010 CPD ¶ 7 at 5. Our Office will not question an agency's determinations absent evidence that those determinations are unreasonable or contrary to the stated evaluation criteria. Id.

Under the past performance factor, the agency was to evaluate the quality of the offeror's relevant and recent past performance based on the information in the offeror's proposal, the government's experience with the offeror, and the information obtained through reference checks and/or from other sources. RFP at 45. Proposals were to be evaluated as superior, satisfactory, unsatisfactory or neutral. AR, exh. 40, Final Technical Evaluation Report, at 3. A superior rating was defined as, "[b]ased on the Offeror's past performance record, essentially no doubt exists that the Offeror will successfully perform the required effort." Id. A satisfactory rating was defined as, "[ba]sed on the Offeror's past performance record, it is likely that the Offeror will successfully perform the required effort." Id.

Aon submitted five past performance references, including one as the incumbent DSA contractor. AR, exh. 34, Aon Final Technical Proposal, at 103-114. The remaining references, for services provided in support of WYO insurers, met or

---

(...continued)

other prices received. The agency's discussion letter to Torrent states, "your total evaluated price exceeds the government estimate and is considered to be too high in comparison to other offerors. . . . Price reductions are necessary to make your proposal more competitive. This will increase your likelihood of being selected for contract award." AR, exh. 49, Torrent Discussion Letter, dated Sept. 16, 2016, at 1.

exceeded the dollar amount for the contract contemplated here. Id. In the final evaluation, the TET rated Aon's past performance as satisfactory. The TET found:

The past performance examples provided by the offeror were very relevant, with all examples of similar size and scope to the DSA program, and were responsive to the evaluation factors. The feedback received from several points of contact provided by AON indicate that they viewed AON's performance as satisfactory but not outstanding; all indicated that they would work with AON again. There is one [Contractor Performance Assessment Reporting System (CPARS)] rating provided for AON of "very good." On the whole, the TET viewed past performance positively, but did not find anything that pushed the rating past satisfactory.

AR, exh. 40, Final Technical Evaluation Report, at 12.<sup>3</sup>

Torrent submitted five past performance references, three performed by Torrent, and two performed by the firm's subcontractors. AR, exh. 36, Torrent Final Technical Proposal, at 61-68. All three of Torrent's references were for services performed in support of WYO insurers, but for a significantly smaller dollar value than that contemplated here. Id. The references for Torrent's subcontractors both involved support to various aspects of the NFIP. Id. Only one of Torrent's references submitted a questionnaire, which gave the firm two outstanding ratings and two satisfactory ratings. One questionnaire was submitted for one of Torrent's subcontractors, which provided satisfactory ratings. AR, exh. 43, Past Performance Worksheets, at unnumbered pages 28-43. The TET evaluated Torrent's past performance as satisfactory, stating:

The TET considered most experience presented as either relevant or very relevant, and the feedback received from points of contact indicated satisfactory performance. The evidence presented suggests that it is likely that Torrent will successfully perform if selected for the DSA.

AR, exh. 40, Final Technical Evaluation Report, at 23.

The SSA reviewed the final technical evaluation report and found the following:

---

<sup>3</sup> The record shows that one reference gave Aon three satisfactory ratings and one outstanding rating, and another reference gave Aon two satisfactory ratings and three outstanding ratings. AR, exh. 43, Past Performance Worksheets, at unnumbered pages 6, 17.

The TET rated Torrent as satisfactory for past performance. It is likely that Torrent will successfully perform the required effort. The past performance examples provided by Torrent were relevant and responsive to the evaluation factors. Feedback received from points of contact indicate that they viewed Torrent's performance as satisfactory.

The TET rated AON as satisfactory for past performance. It is likely that AON will successfully perform the required effort. The past performance examples provided by AON were relevant and responsive to the evaluation factors. Feedback received from points of contact indicate that they viewed AON's performance as satisfactory.

The TET evaluated no strengths or weaknesses for AON's solution. The TET evaluated no strengths or weaknesses for Torrent's solution. There are no meaningful differences between AON and Torrent relative to past performance.

AR, exh. 41, SSDD, at 23. There is no other analysis in the contemporaneous record of the agency's past performance evaluation of either offeror or a comparison of their features. The agency's filings in the instant protest add no additional information to support the assessment.

Our review of the record does not lead us to question the assignment of satisfactory past performance ratings to either offeror given the broad discretion afforded agencies in evaluating past performance and the broad definition of the satisfactory rating. However, as we have consistently held, adjectival ratings serve only as a guide to, and not a substitute for, intelligent decision-making. Science Applications Int'l Corp., B-407105, B-407105.2, Nov. 1, 2012, 2012 CPD ¶ 310 at 7. Given the apparent differences in the past performance records of the two offerors, we cannot conclude that the SSA's unsupported conclusion that there were no meaningful differences between the firms' past performance was reasonable. It appears that the SSA based his decision on a comparison of adjectival ratings and, without more, we cannot find this aspect of the agency's evaluation to be reasonable.

However, we will not sustain a protest unless there is a determination that Aon was prejudiced by the procurement error. See Intelsat General Corp., *supra*, at 19-20 (competitive prejudice is an essential element of a viable protest). On this record, we conclude that the protester has not shown a reasonable possibility of prejudice. Given the evaluation scheme, which ranked past performance as the fifth most important technical factor, and given the obvious technical superiority of Torrent's proposal, even given Aon's large price advantage, the record does not support the conclusion that Aon has a reasonable possibility of receiving award of the contract were we to sustain the protest on this limited basis.

## Organizational Conflict of Interest

HPES argues that Torrent has two OCIs stemming from its relationship with its parent company, which is also a flood insurance broker. Specifically, HPES asserts that Torrent has an impaired objectivity OCI because, according to the protester, “Torrent is caught between its obligations as the DSA to steer homeowners towards Direct-side flood insurance and the business interests of its owner Marsh, a company that profits from directing homeowners to WYOs.” Supp. Protest at 10-11. HPES also argues that Torrent’s relationship with its parent company raises significant concern regarding unequal access to information. Id. at 11-12.

An impaired objectivity OCI, as addressed in FAR subpart 9.5 and the decisions of our Office, 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(a); Diversified Collection Servs., Inc., B-406958.3, B-406958.4, Jan. 8, 2013, 2013 CPD ¶ 23 at 5-6. The concern in such impaired objectivity situations is that a firm’s ability to render impartial advice to the government will be undermined by its relationship to the product or service being evaluated. PURVIS Sys., Inc., B-293807.3, B-293807.4, Aug. 16, 2004, 2004 CPD ¶ 177 at 7. 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 a competitive advantage in a later competition for a government contract. FAR § 9.505-4; Cyberdata Techs., Inc., B-411070 et al., May 1, 2015, 2015 CPD ¶ 150 at 6.

The primary responsibility for determining whether a conflict is likely to arise, and the resulting appropriate action, rests with the contracting agency. FAR § 9.504; RMG Sys., Ltd., B-281006, Dec. 18, 1998, 98-2 CPD ¶ 153 at 4. Once an agency has given meaningful consideration to whether an OCI exists, our Office will not sustain a protest challenging a determination in this area unless the determination is unreasonable or unsupported by the record. See DV United, LLC, B-411620, B-411620.2, Sept. 16, 2015, 2015 CPD ¶ 300 at 6.

The agency responds that the contracting officer did not identify any potential OCIs prior to the allegations raised by HPES that would require him to avoid, neutralize, or mitigate, any OCIs. Legal Memorandum at 20. However, in response to the protest, the contracting officer performed an analysis and found no potential OCIs. The contracting officer found that HPES’ allegations were speculative; that the incumbent contractor, Aon, performed under a similar industry structure with no OCIs identified or discovered during its performance; that under its own rationale HPES would suffer from a similar OCI; and that HPES did not demonstrate how Torrent would benefit from the information it would gain during contract performance, or how it would gain access to competitively useful information. Finally, the contracting officer noted that Torrent would be subject to contractual obligations to protect sensitive information. Contracting Officer’s Statement at 17.

We are provided no basis to object to the agency's determination. With respect to Torrent's alleged impaired objectivity OCI, we agree with the agency that HPES' allegations are speculative and provide no basis for us to question the agency's determination. The agency submits two declarations, one from the contracting officer and one from the branch chief of the DSA program. Both declarations discuss the nature of the relationship between the DSA and WYO programs, which HPES asserts gives rise to this OCI. While a discussion of the intricacies of the program is not essential for this decision, both declarants provide sufficient information about the programs not otherwise found in the record that belie the HPES allegations, including the DSA contractor's lack of access to any WYO policy or claim information.<sup>4</sup> Both declarants also question the sufficiency of HPES' allegations on various levels, to which HPES provides no material response. As a result, on this record we are not convinced that there is a potential or actual impaired objectivity OCI.

With respect to its second allegation, we likewise are provided no basis to question the agency's judgment. In this regard, the agency asserts that Torrent would not have access to any competitively useful information, such as WYO policy or competitor information, and that Torrent would be required to comply with contractual requirements to safeguard sensitive information. AR, exh. SS, Declaration of Contracting Officer, at 3. Moreover, as a matter of legal sufficiency, it does not appear that HPES has alleged an unequal access OCI as the allegation is based on the risk of prospective use of sensitive information by Marsh, and not any competitive advantage gained by Torrent resulting from access to information it gained through work on a government contract, which would be the inquiry of such an allegation. Thus, any potential OCI would arise at the time Marsh accessed and used such information to its competitive advantage in a future procurement. See AT&T Gov't Solutions, Inc., B-413012, B-413012.2, July 28, 2016, 2016 CPD ¶ 237 at 6-7.

#### Best-Value Tradeoff

---

<sup>4</sup> For instance, the agency explains that the DSA serves as an insurer of last resort selling policies through agents not otherwise affiliated with a WYO company, writes all group flood insurance policies and services all policies for severe reparative loss properties. AR, exh. RR, Declaration of DSA program branch chief, at 3-4. According to the agency, the terms, rate structures and premium costs are all established by FEMA for the DSA and WYO programs, and the DSA would not have access to any WYO policy or claim information. Id. at 4. Based on this, even when there is an overlap of policies, the agency questions the practicality and incentive for the DSA to act as the protester alleges. See e.g. Declaration of Contracting Officer at 4.

Having addressed the protesters' allegations, and finding two errors in the procurement, one with respect to the agency's evaluation of Aon's past performance relative to Torrent's, and the other with respect to HPES' discussions with respect to price, we now turn to the issue of prejudice in the context of the agency's best-value tradeoff decision. As discussed above, we conclude that neither Aon nor HPES has shown prejudice stemming from these evaluation errors. We also conclude that the agency's decision to award to Torrent as the higher-priced, higher technically-rated offeror was without objection.

Where solicitations provide for award on a best-value basis, it is the function of the source selection authority to perform a price/technical tradeoff, that is, to determine whether one proposal's technical superiority is worth the higher price. Lynxnet, LLC, B-409791, B-409791.2, Aug. 4, 2014, 2014 CPD ¶ 233 at 13. The extent to which one is sacrificed for the other is governed only by the test of rationality and consistency with the stated evaluation criteria. Id. Here, the SSA concluded that Torrent's superior technical solution warranted paying a price premium of 19.9 percent over HPES' proposal and 36.1 percent over Aon's proposal. Id. at 17, 25. We are provided no basis to question this conclusion.

As discussed by the SSA, the agency's need was for a superior technical solution, a need that was reflected in the evaluation scheme. AR, exh. 41, SSDD, at 26. The SSA noted that, in light of heightened scrutiny of NFIP as the program approaches legislative reauthorization, the agency was seeking a solution-oriented offeror who not only met the challenges but seized opportunities for improvement. Id. at 1-2. According to the SSA, Torrent presented a superior solution for the government that will "marry" technology and subject matter expertise to maximize the effectiveness and efficiency of delivering flood insurance as the DSA. Id. This conclusion is supported by the superior ratings received by the firm under the most important technical factors. Id. at 8-9.

The record shows that the agency conducted a detailed analysis of the relative merits of each proposal, as well as a comparison of the proposals under each of the technical factors in an overall tradeoff decision. It is apparent from the record that Torrent's proposal was recognized for its significant technical superiority over the proposals of Aon and HPES, even given the price premium of Torrent's proposal. For instance, in justifying Torrent's price premiums over HPES' proposal, the SSA highlighted as the most significant difference being under Factors 1 and 3, and with respect to Aon, he found that Torrent proposed significant benefits under the three most important factors. Relative to both proposals, the SSA found that Torrent had proposed "effective, innovative, customer-focused solutions . . . , and demonstrated that it has an excellent understanding of how to deliver the solutions in a secure, Government-approved IT environment." AR, exh. 41, SSDD, at 10, 18. Save for one instance, discussed above, the TET and SSA's detailed evaluation of the relative benefits of each proposal has not been successfully challenged by either

protester. Under the circumstances, we have no basis to question the agency's price-technical tradeoff decision.

The protests are denied.

Susan A. Poling  
General Counsel