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Decision

Matter of: CACI, Inc.-Federal; General Dynamics One Source, LLC

File: B-413860.4; B-413860.5; B-413860.6; B-413860.7; B-413860.8

Date: January 5, 2018

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DIGEST

1. Protests that the awardee had disqualifying organizational conflicts of interests are denied where the agency waived the alleged conflicts and where the waiver was consistent with the requirements of the Federal Acquisition Regulation.
2. Protest that the agency violated the Procurement Integrity Act by including in the solicitation the independent government cost estimate, which was based, in part, on the protester's information from one of the incumbent contracts, is dismissed where the protester was advised of the results of the agency's investigation concluding that there was no violation but did not file a timely protest with our Office.
3. Protest that the agency failed to adequately address the alleged bias of an agency evaluator is denied where the record does not show clear and convincing evidence of bias and where, in any event, the evaluator recused himself prior to the evaluation of offerors' final proposal revisions.
4. Protest challenging evaluation of a protester's key personnel is dismissed where the protester would not be in line for award even if the argument had merit.

5. Protest that the agency relied on undisclosed evaluation criteria is denied where the agency's characterization of the solicitation's requirements does not establish that the agency evaluated proposals in a manner inconsistent with the solicitation award criteria.
 6. Protest challenging the agency's evaluation of the realism of the awardee's proposed costs is denied where the agency reasonably found that the awardee's proposed salaries were above the minimums set forth in the independent government cost estimate provided to offerors in the solicitation.
 7. Protest challenging the evaluation of offerors' past performance is denied where, despite the lack of an adequate record detailing the basis for the agency's evaluation, the record shows no possibility of prejudice to the protester.
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DECISION

CACI, Inc.-Federal, of Tampa, Florida, and General Dynamics One Source, LLC (GDOS), of Fairfax, Virginia, protest the issuance of a task order to Jacobs Technology Inc., of Tullahoma, Tennessee, under request for proposals (RFP) No. H92222-16-R-0016, which was issued by the U.S. Special Operations Command (USSOCOM)¹, for special operations forces information technology enterprise contract (SITEC) requirements. The protesters argue that Jacobs had disqualifying organizational conflicts of interest (OCIs) arising from its performance of other contracts for the agency. CACI also argues that the agency failed to adequately investigate whether information included in an attachment to the solicitation resulted in a violation of the Procurement Integrity Act, failed to adequately address the alleged bias of an agency evaluator, and unreasonably assigned a weakness to its proposal concerning its proposed key personnel. GDOS also argues that the agency's evaluation relied on unstated evaluation criteria, unreasonably evaluated the realism of the awardee's proposed costs, and unreasonably evaluated the offerors' past performance.

We deny the protests.

BACKGROUND

USSOCOM issued the RFP on June 30, 2016, seeking proposals to provide services to support the agency's information technology enterprise. Agency Report (AR)², Tab 6, RFP, at 1. The solicitation requires offerors to propose support services to enable special operations forces to "conduct operations worldwide across Department of Defense (DoD) and other U.S. and foreign government organizational boundaries."

¹ Although counsel for the Department of the Air Force represented the agency in this protest, all references to the agency are to USSOCOM.

² The agency provided separate reports responding to CACI's and GDOS's protests. Citations to documents in the agency report are to identical documents in each report, unless otherwise noted.

RFP, attach. A, Statement of Work (SOW), at 3. There are several contracts that currently support the agency's information technology enterprise, which are collectively known as SITEC I; each contract is responsible for a separate functional area called a "tower." CACI, GDOS, and Jacobs are each SITEC I contract holders performing a different tower. The majority of the SITEC I tower requirements will be consolidated into the task order at issue here, which is called SITEC II enterprise operations and maintenance (EOM). AR, Tab 33, OCI Investigation Report, at 1.

The competition was limited to firms³ who hold one of the General Services Administration's (GSA's) Alliant multiple-award indefinite-delivery, indefinite-quantity (IDIQ) government-wide acquisition contracts (GWACs). RFP at 1. The RFP anticipated issuance of a single task order with fixed-price and cost-reimbursement line items for a 3-month transition period, a base period of 1 year, and four 1-year options. Id.

The RFP provided that proposals would be evaluated on the basis of the following three evaluation factors: (1) cost/price, (2) technical and management approach, and (3) past performance. Id. at 11. The technical and management evaluation factor was to be evaluated based on the following six areas: (1) transition plan, (2) recruitment and retention plan, (3) management organizational structure and integration with USSOCOM, (4) reliable, flexible, and scalable worldwide services, (5) enterprise modernization, and (6) quality control plan. Id. at 13-14. The solicitation advised that offerors' proposed cost/price would be evaluated for reasonableness and realism. Id. at 12. For purposes of award, the technical and management factor was to be "more important" than the past performance factor, and the non-cost/price factors were, when combined, to be "significantly more important" than cost/price. Id. at 11.

USSOCOM received proposals from four offerors, including CACI, GDOS, and Jacobs, by the initial closing date of August 22, 2016. The Agency evaluated the proposals and awarded the task order to Jacobs on February 24, 2017. CACI and GDOS filed protests with our Office on March 12, alleging that Jacobs had disqualifying OCIs and also challenging the agency's evaluation of the offerors' proposals. Prior to filing its report on the protest, the agency advised our Office that it would take corrective action in response to the protests by investigating the alleged OCIs, conducting discussions with offerors, and making a new award decision based on revised proposals. Based on the protested corrective action, our Office dismissed the protests as academic on April 12.

The agency issued a revised solicitation on May 1, and subsequently issued a final revised solicitation on June 8. The agency conducted discussions with offerors and

³ Although firms who compete for task orders under IDIQ contracts are generally referred to as "vendors," the record here primarily uses the term "offerors." For the sake of consistency, our decision uses the term offerors.

requested final proposal revisions by the closing date of August 3. All four offerors submitted revised proposals, which were evaluated as follows:⁴

	CACI	GDOS	Jacobs	Offeror 4
Technical and Management	Green/ Moderate Risk	Purple/ Low Risk	Blue/ Low Risk	Green/ Moderate Risk
Past Performance	Substantial Confidence	Substantial Confidence	Substantial Confidence	Substantial Confidence
Evaluated Cost/Price	\$818,762,921	\$781,320,621	\$778,644,534	\$781,206,789

AR, Tab 27, Source Selection Decision Document (SSDD), at 4.

USSOCOM's source selection advisory council (SSAC) recommended award to Jacobs, finding that the awardee's proposal showed an "exceptional approach and understanding of the requirements, and a low risk of unsuccessful performance," and that it also offered the lowest evaluated cost/price. AR, Tab 26, SSAC Award Recommendation, at 5. The source selection authority (SSA) stated that "[b]ased on my independent judgment and personal review of the facts," he agreed with the SSAC's recommendation. AR, Tab 27, SSDD, at 4. In this regard, he noted that Jacobs' proposal "significantly exceeded the Government requirements by offering a clear, unambiguous, comprehensive, and transparent plan that provided exceptional detail in each of the six sections of their technical proposal." Id. The SSA concluded that "[t]he proposals submitted by CACI and [offeror 4] are quite good, but they are inferior to GDOS's technical proposal," and that "[t]he GDOS technical proposal is better than CACI's and [offeror 4's] technical proposals, but is still inferior to and overwhelmed by Jacobs's technical proposal." Id. at 6. In light of Jacobs' lower overall evaluated cost/price, the SSA concluded that "Jacobs provided the clear and obvious best value to the Government." Id.

USSOCOM awarded the task order to Jacobs on August 29. The agency provided debriefings to each offeror, and these protests followed on September 27.

⁴ For the technical and management factor, the agency assigned one of the following ratings: blue--exceptional approach with low performance risk; purple--thorough approach with low or moderate performance risk; green--adequate approach with no worse than moderate performance risk; yellow--not an adequate approach with high performance risk; red--unawardable, with unacceptable performance risk. AR, Tab 25, Source Selection Evaluation Board (SSEB) Report, at 6. For the past performance factor, the agency assigned one of the following ratings: substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown (neutral) confidence. Id. at 9.

DISCUSSION

CACI and GDOS both argue that USSOCOM failed to adequately investigate whether Jacobs had disqualifying OCIs arising from its performance of other contracts, and that the agency's waiver of the conflicts was not reasonable. CACI also raises the following three primary arguments: (1) the agency violated the Procurement Integrity Act, because it inadvertently released data concerning the protester's performance of the incumbent contract in the solicitation, (2) the agency failed to reasonably address the role of an evaluator who was biased, and (3) the agency unreasonably evaluated the protester's proposal under the technical and management evaluation factor. GDOS also raises the following three arguments: (1) the agency's characterization of the RFP as requiring a "staff augmentation" approach resulted in an unreasonable evaluation of proposals under the technical and management evaluation factor, (2) the agency unreasonably evaluated the realism of Jacobs' proposed costs, and (3) the agency unreasonably evaluated the offerors' past performance. For the reasons set forth below, we find no basis to sustain the protest.⁵

The task order competition here was conducted among GSA Alliant GWAC holders pursuant to the provisions of Federal Acquisition Regulation (FAR) subpart 16.5.⁶ In reviewing protests of awards in task order competitions, we do not reevaluate proposals but examine the record to determine whether the evaluations and source selection decision are reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations. DynCorp Int'l LLC, B-411465, B-411465.2, Aug. 4, 2015, 2015 CPD ¶ 228 at 7. A protester's disagreement with the agency's judgment regarding the evaluation of proposals, without more, is not sufficient to establish that the agency acted unreasonably. Imagine One Tech. & Mgmt., Ltd., B-412860.4, B-412860.5, Dec. 9, 2016, 2016 CPD ¶ 360 at 4-5.

Organizational Conflicts of Interest and Waiver

CACI and GDOS argue that Jacobs had numerous disqualifying OCIs which rendered the award improper, and that the awardee was expressly barred under the terms of an OCI clause in its SITEC I contract from competing for the task order here. The protesters contend that USSOCOM unreasonably concluded that there were no disqualifying OCIs and also argue that the agency's waiver of the applicability of the OCI provisions of the FAR was unreasonable. For the reasons discussed below, we

⁵ CACI and GDOS also raise other collateral arguments. Although we do not address every argument, we have reviewed them all and find that none provides a basis to sustain the protest.

⁶ The awarded value of the task order at issue exceeds \$10 million. AR, Tab 27, SSDD, at 4. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of orders under multiple-award IDIQ contracts that were awarded under the authority of Title 41 of the U.S. Code. 41 U.S.C. § 4106(f)(1)(B).

conclude that the agency's waiver was consistent with the requirements of FAR § 9.503 and therefore find no basis to sustain the protest.⁷

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

The FAR also provides that an agency may, as an alternative to avoiding, neutralizing, or mitigating an OCI, execute a waiver determining that application of the FAR's OCI provisions in a particular circumstance is not in the government's interest as follows:

The agency head or a designee may waive any general rule or procedure of this subpart by determining that its application in a particular situation would not be in the Government's interest. Any request for waiver must be in writing, shall set forth the extent of the conflict, and requires approval by the agency head or a designee. Agency heads shall not delegate waiver authority below the level of head of a contracting activity.

FAR § 9.503.

⁷ As discussed below, we find no basis to sustain CACI's arguments that the agency violated the Procurement Integrity Act or that the agency's corrective action failed to address bias concerns regarding an agency evaluator. Based on our conclusions regarding these two arguments, we also conclude that CACI is not an interested party to argue that Jacobs had disqualifying OCIs or to challenge the evaluation of its proposal under the technical and management evaluation factor because those arguments, even if meritorious, would not change CACI's competitive standing as compared to GDOS-- which would remain in line for award ahead of CACI. Nonetheless, our discussion of the OCI issues refers collectively to both protesters' arguments concerning OCIs because they are largely identical.

Waivers of OCIs must be consistent with the provisions of FAR § 9.503 and reasonably supported by the record. Concurrent Techs. Corp., B-412795.2, B-412795.3, Jan. 17, 2017, 2017 CPD ¶ 25 at 8. In this regard, the waiver must be in writing, set forth the extent of the conflict, and be approved by the appropriate agency official. Id. As our Office explained in AT&T Government Solutions, Inc., B-407720, B-407720.2, Jan. 30, 2013, 2013 CPD ¶ 45, we will dismiss a protest alleging an OCI where the head of the contracting activity (HCA) waives the alleged conflict. In that decision, however, we also noted that a protester may separately challenge an agency's waiver of an OCI. Id. at n.4.

OCI Investigation and Waivers

As discussed above, the procurement here was for the award of a task order for USSOCOM's SITEC II requirements, which combined the majority of the requirements that are currently being provided to the agency under separate SITEC I contracts. Jacobs' incumbent SITEC I contract is for information technology service maintenance (ITSM) and addresses a range of support services. AR, Tab 33, OCI Investigation Report, at 5. As discussed below, the ITSM services provided Jacobs access to performance information regarding other SITEC I contractors. Due to this access, Jacobs' ITSM contract contained clause H.11, which applied only to Jacobs and not to any of the other SITEC I contractors:

H. 11 Organizational Conflict Of Interest and Protecting and Handling Proprietary Information

Organizational Conflict of Interest (OCI)

(a) The work to be performed by the contractor under this contract is of such a nature that it will create an OCI as contemplated and defined by Subpart 9.5 of the Federal Acquisition Regulation (FAR). The contractor (as defined in paragraph (c) below) shall not engage in contract activities which may impair its ability to render unbiased advice and recommendations, or in which it may gain an unfair competitive advantage as a result of the knowledge, information and experience gained during the performance of this contract.

(b) The contractor and its subcontractors shall be ineligible for award of contracts or subcontracts for USSOCOM Information Technology Enterprise Contracts (SITEC) Data Center Services, Distributed Computing Services, Enterprise Network Services, Application Management Services, Specialty Services, and C4I Production Services-[tactical local area network (TACLAN)] in support of the United States Special Operations Command.

* * * * *

(g) The Government may waive application of this clause when it is determined to be in the best interest of the Government to do so.

AR, Tab 47, ITSM Solicitation, § H.11 at 40.

USSOCOM initially awarded the SITEC II task order to Jacobs. CACI and GDOS filed protests with our Office, arguing that Jacobs had disqualifying OCIs arising from its work as the ITSM contractor and certain other contracts in support of the agency. The protesters alleged that Jacobs had disqualifying OCIs in all three areas identified in the FAR: impaired objectivity associated with Jacobs' advice to the agency under the ITSM contract concerning the performance of the other SITEC I contractors⁸; biased grounds rules associated with Jacobs' advice to the agency under the ITSM contract that may have affected how the agency prepared the RFP for the SITEC II competition; and unequal access to information associated with Jacobs' work as the ITSM contractor and other contracts for the agency, which the protesters contend involved access to confidential cost and price information for the other SITEC I contractors and the government's requirements for the SITEC II competition.

USSOCOM took corrective action in response to the protests, in part to address the OCI allegations. During the corrective action, the agency investigated the alleged OCIs and concluded that Jacobs had no disqualifying OCIs. With regard to the ITSM contract, the agency concluded that there were no impaired objectivity or biased ground rules OCIs based on the following analysis:

1. Impaired Objectivity: a thorough review of the offerors' [information technology (IT)] and support services contracts and/or task orders determined that none of the offerors' contracts/task orders had the potential for an impaired objectivity OCI. This is because none of the offerors' contracts/task orders required any offeror to evaluate its own performance or products, or the performance or products of a competitor or to evaluate proposals as they pertained to the SITEC II [enterprise operations and management (EO&M)] contract.
2. Biased ground rules: a thorough review of the offerors' IT and support services contracts/task orders determined that none of the offerors' contracts/task orders had the potential for a biased ground rules OCI. This is because none of the offerors' IT and service support contracts/task orders required any offeror to develop or otherwise establish the ground rules or requirement of another government contract for which Jacobs is also competing or intends to compete.

⁸ We note, for the record, that this concern appears to relate to Jacob's performance of the incumbent SITEC I ITSM contract, rather than the potential for impaired objectivity in performing the SITEC II requirements. See CACI Comments, Nov. 6, 2017, at 29.

AR, Tab 33, OCI Investigation Report, at 4 (emphasis in original).

USSOCOM also reviewed the protesters' allegations that Jacobs had an unequal access to information OCI based on its access to nonpublic information through performance of the ITSM contract and the following other contracts, which could have provided Jacobs an advantage in the SITEC II competition: (1) H92222-11-D-0001, ITSM; (2) H92222-10-D-0018 task order 0007 Global Battlestaff and Program Support (GBPS) and follow-on contract H92222-17-C-0027; (3) H92222-10-D-0018, task order 0048, insider threat, (4) H92222-10-D-0018, task order 0029 GBPS [special operations forces acquisition, technology, and logistics] and follow-on contract H92222-17-C-0035. Id. at 5-7. The agency concluded that Jacobs had access to "certain SITEC I tower contractor information" and other nonpublic agency information. Id. at 5. In each case, however, the agency concluded that the information to which Jacobs had access did not provide an unfair competitive advantage for the SITEC II competition. Id. at 5-7.

Although USSOCOM concluded that Jacobs did not have any disqualifying OCIs, the contracting officer nonetheless requested that the HCA waive the applicability of the OCIs rules to the procurement. AR, Tab 44, OCI Waiver, at 1. The HCA approved the request on July 26, 2017. AR (B-413860.4, B-413860.6), Tab 46, Decl. of HCA Concerning Waiver Date, Oct. 27, 2017, at 1.

The waiver request stated that the contracting officer had "performed a detailed investigation into all relevant potential" OCIs and found that "there are no actual OCIs that require further mitigation or neutralization as required by FAR 9.504." AR, Tab 44, OCI Waiver, at 1. The waiver request also stated that "[i]f there was a residual OCI that the Contracting Officer was unaware of, due to Jacobs' role as IT Service Manager, that OCI is immaterial to this competition" because the "previous SITEC I requirement and the current SITEC II EO&M requirement are fundamentally different." Id. In this regard, the agency noted that "[t]he previous contract was a performance based service acquisition" where the contractors were required to perform based on service level agreements, whereas the SITEC II requirement is for "staff augmentation" where the agency has "established manning levels based on a consolidation of all the previous SITEC I tower contracts" and where "[a]ll offerors must propose the Government furnished manning." Id. at 1-2. For these reasons, the contracting officer concluded that Jacobs' access to nonpublic information from the SITEC I contract would not have provided an unfair competitive advantage. Id.

On August 29, USSOCOM again selected Jacobs' proposal for award. CACI and GDOS filed the instant protests on September 27 following debriefings provided by the agency, again arguing that Jacobs had disqualifying OCIs. On October 6, prior to filing its reports responding to the protests, the agency provided the protesters with copies of the OCI waiver signed by the HCA in July. Both protesters filed supplemental protests challenging the reasonableness of the waivers. On October 19, the contracting officer submitted to the HCA a supplemental waiver request, which was approved on

October 20. AR, Tab 45, Supp. OCI Waiver, at 2-3. This waiver was provided in the agency reports filed with our Office on October 27.

The supplemental waiver noted that the protesters challenged whether the initial OCI waiver had addressed all of the potential OCIs, and stated that “[t]o the extent any residual OCIs might exist in the areas of impaired objectivity, biased ground rules, or unequal access to nonpublic information, the application of the rules and procedures of FAR subpart 9.5 to those OCIs is waived.” Id. at 1. As explained below, the supplemental waiver also listed all of the contracts and allegations which comprised the OCI concerns that were waived. Id. at 1-2.

Challenges to the OCI Waiver

CACI and GDOS argue that the agency’s investigation of OCIs was incomplete and unreasonable. The protesters also argue that the initial and supplemental OCI waivers are unreasonable and do not comply with the requirements of the FAR.

Based on our review of the record, we conclude that USSOCOM waived application of FAR subpart 9.5 with regard to all of the conflicts identified by the protesters, as authorized by FAR § 9.503. Specifically, the waiver described the OCIs being waived and the waiver was approved by the HCA. See Science Applications Int’l Corp.--Costs, B-410760.5, Nov. 24, 2015, 2015 CPD ¶ 370 at 5. We address the protester’s challenges to the waiver, below.

First, we conclude that the waiver, as amended, sets forth the extent of the potential conflict. The initial waiver described OCI allegations set forth in the initial protests as follows:

First, it is alleged that the current Jacobs’ SITEC I tower contract (H92222-11-D-0001) contains a contract clause that unequivocally bars Jacobs from competing for any future SITEC service requirements. Next, it is alleged that Jacobs’ role as USSOCOM IT Service Manager under contract H92222-11-D-0001 resulted in an inmitigable organizational conflict of interest (OCI). Further, it is alleged that Jacobs’ employees had unequal access to nonpublic information that resulted in a competitive advantage for Jacobs. Lastly, it is alleged that Jacobs’s employees attended government only meetings in which the SITEC II EO&M competition was discussed.

AR, Tab 44, OCI Waiver, at 1.

The supplemental waiver set forth in more detail the scope of the alleged OCIs and the matters considered by the agency, as follows:

To the extent any residual OCIs might exist in the areas of impaired objectivity, biased ground rules, or unequal access to nonpublic

information, the application of the rules and procedures of FAR subpart 9.5 to those OCIs is waived. These potential OCIs include, but are not limited to all of the alleged OCIs contained in (1) the CACI initial protest filed on the date of March 13, 2017, the second CACI protest filed on the date of September 27, 2017, and the CACI supplemental protest filed on the date of October 16, 2017, and (2) the alleged OCIs contained in the GDOS initial protest filed on the date of March 13, 2017, the second GDOS protest filed on the date of 27 September 2017, and the GDOS supplemental protest filed on the date of 16 October 2017. The specific allegations of OCI that are being waived here are listed below:

- Jacobs management and advisory role under contract H92222-11-D-0001 “ITSM”
- Jacobs duties under contract H92222-10-D-0018 task orders 0029 and 0031 as well as follow-on efforts H92222-16-C-00100 and H92222-16-C-101 and H92222-17-C-0035 collectively known as “GBPS”
- Jacobs duties under contract H92222-12-D-0018 [task order] 48 “Insider Threat”
- Jacobs attendance at weekly planning meetings
- Jacobs employees occupying office space near the USSOCOM J6 “front office”
- Clause H.11 of contract H92222-11-D-0001
- Jacobs access to SITEC I contractor “transition out” documentation
- Jacobs role in semi-annual reviews under contract H92222-11-D-0001
- Jacobs alleged access to [contract line item number] pricing and cost backup
- Jacobs access to contractor technical approaches under contract H92222-11-D-0001
- Jacobs access to Standard Operating Procedures under contract H92222-11-D-0001
- Jacobs access to contractor personnel lists under contract H92222-11-D-0001
- Jacobs exposure to email correspondence under contract H92222-11-D-0001

- Jacobs access to information assurance oversight data under contract H92222-11-D-0001
- Any alleged role Jacobs had in “establishing ground rules” for the EO&M procurement
- Jacobs role under contract H92222-16-C-0022
- Any and all other potential or actual residual OCIs relevant to the performance of Jacobs under the SITEC I ITSM contract.

AR, Tab 45, Supp. OCI Waiver, at 1-2.

The protesters do not contend that the supplemental waiver fails to list all of the allegations raised. Instead, as discussed next, the protesters dispute the conclusions drawn by the agency regarding the allegations and facts. We therefore conclude that the supplemental waiver sets forth the extent of the OCI allegations raised by the protesters as required by FAR § 9.503.

Second, the protesters argue that the OCI waivers are unreasonable because they rely on conclusions regarding the merits of the protesters’ OCI allegations as the underlying rationale for waiving OCIs. In essence, the protesters contend that the OCI investigation was unreasonable and that the waivers were necessarily flawed based on that unreasonable investigation. We disagree with the protester’s characterizations of the waivers, and thus the relevance of the agency’s OCI investigation to the reasonableness of the waiver.

The initial waiver stated that, even though the agency’s investigation of the OCI allegations found no basis to exclude Jacobs, the agency nonetheless concluded that waiver of the OCI provisions of FAR subpart 9.5 was in the best interest of the government, as follows:

It is the determination of the Contracting Officer that it is in the best interest of the Government to waive any remaining residual OCI. By waiving any such OCI, the Government benefits from increased competition and the inclusion of an experienced and successful IT Service Management contractor. This benefit is weighed against the potential residual risk that Jacobs may have had access to SITEC I contractor performance data as part of their role as IT Service Manager, although all evidence that the Contracting Officer has at his disposal shows that is not the case. That risk is further attenuated by the fact that even if Jacobs had access to nonpublic information, that information was of no value in this competition because the SITEC II EO&M requirement was fundamentally different than the SITEC I requirement that Jacobs managed. Here, the actual benefits to the Government outweigh[] the

remote potential harm to the fairness and integrity of the SITEC II EO&M competition.

AR, Tab 44, OCI Waiver, at 2.

The supplemental waiver similarly stated that, despite finding that there were no disqualifying OCIs, waiver of the OCI was in the best interest of the government as follows:

As stated in the Contracting Officer's OCI Investigation Report, no factual OCIs were found in reference to any of these alleged or potential OCIs. However, once again out [of] an abundance of caution, I have determined that waiving the application of the rules and procedures of FAR subpart 9.5 to these potential OCIs is in the Government's interest to facilitate full and open competition and the acquisition of the solution that offers the best value to the Government.

In addition, it is my determination that application of the general rules and procedures found in FAR subpart 9.5, to the particular situation of the SITEC II EO&M acquisition, including any, each, every, and all actual, potential, or alleged OCIs that do or might exist under solicitation H92222-16-R-0016 and contract H92222-17-F-0069 for USSOCOM SITEC II EO&M, would not be in the Government's interest because sufficient resources have already been expended to determine that there are, in fact, no OCIs to avoid, neutralize, or mitigate.

Further, I have fully considered the risks associated with waiving the OCI[s] here, with full consideration given to the allegations of both CACI and GDOS, specifically those raised in the protests lodged by CACI and GDOS to the EO&M contract award.

AR, Tab 45, Supp. OCI Waiver, at 2.

The protesters argue, in effect, that because the OCI waivers state that the agency found no disqualifying OCIs, the waivers can only be reasonable if the agency's review of the merits of the underlying OCI concerns was also reasonable. The record shows, however, that USSOCOM did not waive the application of FAR subpart 9.5 based solely on its conclusion that Jacobs had no disqualifying OCI. Instead, as set forth above, the waivers--particularly the supplemental waiver--state that, regardless of the agency's assessment of the merits of the OCI allegations, it was in the best interests of the government to waive the application of the FAR OCI provisions. Because the agency's waiver of the OCIs does not depend on the conclusions set forth in the agency's OCI

investigation, we find no basis to sustain the protesters' challenges to the reasonableness of the OCI waiver.⁹

Third, the protesters challenge USSOCOM's determination that waiver of the application of FAR subpart 9.5 was in the "best interest of the government." In this regard, the protesters contend that the rationales set forth in the waivers are either not sufficient to constitute the best interests of the government, or are in fact contrary to the government's best interests.

As discussed above, the contracting officer concluded that waiver of the application of FAR subpart 9.5 to the procurement was in the best interest of the government because doing so provided the benefit of additional competition by not excluding any offeror, and the avoidance of additional efforts to further review the OCIs. AR, Tab 44, OCI Waiver, at 2; Tab 45, OCI Waiver, at 2. We note that the FAR commits a determination of the government's best interest to the agency's discretion. Although the protesters each contend that the rationales set forth by the agency for waiver of the FAR's OCI provisions are inadequate and that the government's interest would be better served by a more detailed investigation of the alleged OCIs or a different conclusion regarding whether Jacobs had disqualifying OCIs, the protester's disagreements with the agency's assessment provides no basis for our Office to conclude that the agency exceeded its authority or abused its discretion in waiving the OCIs here.

Fourth, the protesters argue that the Jacobs' ITSM contract for SITEC I contained an OCI clause which rendered the firm ineligible to compete for the SITEC II award. The protesters contend that the agency unreasonably concluded that the OCI clause did not apply to the SITEC II competition and that the clause was subject to waiver through the authority of FAR § 9.503.

As set forth above, Jacobs was the only firm whose SITEC I contract included clause H.11, which set forth additional OCI restrictions. The clause in Jacobs' ITSM contract stated that "[t]he work to be performed by the contractor under this contract is of such a nature that it will create an OCI as contemplated and defined by Subpart 9.5 of the Federal Acquisition Regulation (FAR)." AR, Tab 47, ITSM Solicitation, § H.11 at 40. The clause further provided that, as result of the presumed OCI, the awardee "shall be ineligible for award of contracts or subcontracts for USSOCOM Information Technology Enterprise Contracts (SITEC) Data Center Services, Distributed Computing Services, Enterprise Network Services, Application Management Services, Specialty Services, and C4I Production Services-TACLAN in support of the United States Special Operations Command." Id.

⁹ We further find no basis to sustain the protest based on the fact that the agency waived the application of FAR subpart 9.5 despite also finding that no OCI exists. Put differently, there is no requirement that an agency concede that a protester's allegations are correct as a condition to executing a waiver under FAR § 9.503.

USSOCOM concluded that the terms of the H.11 clause did not apply to the SITEC II task order competition. Contracting Officer's Statement (COS) (B-413860.5, B-413860.7) at 8-9. In this regard, the agency contends that the clause applies only to the SITEC I contract, and was not intended to preclude Jacobs, as the ITSM contractor, from performing work under any of the other SITEC I contracts. As the protesters note, however, the clause refers to SITEC services, generally, and did not specifically refer to particular contracts.

Regardless of whether clause H.11 applies to contracts outside of SITEC I, the contracting officer's supplemental waiver included clause H.11 as one of the matters covered by the waiver. Because the clause specifically terms the risk arising from performance of Jacobs' ITSM contract as an OCI, we agree with the agency that this matter could be waived through the authority provided to the agency under FAR § 9.503. Additionally, clause H.11 specifically provided that it could be waived, as follows: "(g) The Government may waive application of this clause when it is determined to be in the best interest of the Government to do so." AR, Tab 47, ITSM Solicitation, § H.11 at 40. On this record, we conclude that inclusion of clause H.11 in the agency's supplemental OCI waiver waived the clause and any potential prohibitions on Jacobs' participation in the SITEC II competition.

Finally, GDOS contends that waiver was improper because it was made after the competitive harm to the protesters had occurred and was not otherwise made during the time set forth for analysis of OCIs set forth in FAR subpart 9.5. In this regard, the protester argues that the agency was fully aware of the facts giving rise to the alleged OCIs concerning Jacobs prior to the issuance of the RFP. Similarly, the protester contends that the competitive harm to GDOS occurred as a result of unequal access to information OCIs, and therefore could not be waived after award.

As the protester notes, the FAR requires contracting officers to "[i]dentify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible," and to "[a]void, neutralize, or mitigate significant potential conflicts before contract award." FAR § 9.504(a). Contracting officers are also required to seek the advice of counsel and assistance of technical specialists to evaluate potential contracts, and to "recommend to the head of the contracting activity a course of action for resolving the conflict" prior to issuing a solicitation. Id. § 9.504(c).

As discussed above, however, FAR § 9.503 provides agencies the authority to waive "any general rule or procedure" of FAR subpart 9.5. This provision does not set forth a time at which the waiver must take place, nor does the provision prohibit waiver after a particular point in time. Rather, the provision broadly states the agency may waive any rule or procedure of FAR subpart 9.5--which necessarily encompasses any requirement within the FAR regarding the time for the identification, neutralization, and mitigation of

significant OCIs.¹⁰ For these reasons, we find no basis to conclude that the timing of USSOCOM's issuance of the initial or supplemental waivers provides a basis to sustain the protest.

In sum, we have reviewed all of the protesters' allegations regarding OCIs and conclude that USSOCOM's initial and supplemental waivers complied with the requirements of FAR § 9.503. We therefore find no basis to sustain the protests.

CACI's Allegation Regarding the Procurement Integrity Act

Next, CACI argues that USSOCOM improperly disclosed CACI's proprietary information during the corrective action through the issuance of an RFP attachment and failed to reasonably investigate and resolve this concern as required by the Procurement Integrity Act (PIA). We conclude that this argument is untimely.

The procurement integrity provisions of the Office of Federal Procurement Policy Act (known as the PIA), 41 U.S.C. §§ 2101-2107, provide, among other things, that a federal government official "shall not knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates." 41 U.S.C. § 2102(a)(1); see also FAR §§ 3.104-1-3.104-4. Additionally, as relevant here, the PIA provides that "[e]xcept as provided by law, a person shall not knowingly obtain contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates." Id. § 2102(b).

During USSOCOM's corrective action in response to the initial protests, the agency provided offerors a revised RFP pricing template in the form of a Microsoft Excel workbook. AR, Tab 7, RFP attach. C, EOM Pricing Template, May 1, 2017. The agency explains that the workbook contained a hidden worksheet that contained the independent government cost estimate (IGCE). AR, Tab 38, PIA Investigation Report, at 1. Within that hidden worksheet were password-protected data that supported the IGCE, which included the following information used by the agency to calculate estimated salary ranges for the labor categories: incumbent salary averages, labor rate survey data from online, and General Schedule equivalent rates. AR (B-413860.4, B-413860.6), Tab 9, RFP attach. C, EOM Pricing Template--Unhidden/Unlocked Data, May 1, 2017.

¹⁰ Our conclusion that agencies may waive OCIs after the issuance of a solicitation or the award of a contract is consistent with our Office's decisions which explain that an agency may provide information and analysis regarding the existence of an OCI at any time during the course of a protest, and we will consider such information in determining whether the agency's OCI determination is reasonable. See, e.g., McTech Corp., B-406100, B-406100.2, Feb. 8, 2012, 2012 CPD ¶ 97 at 7; see also Turner Constr. Co., Inc. v. United States, 645 F.3d 1377, 1386-87 (Fed. Cir. 2011).

On May 3, two offerors, CACI and Offeror 4, “advised the Contracting Officer they had unlocked the workbook and accessed the previously hidden IGCE worksheet.” AR, Tab 38, PIA Investigation Report, at 1. On May 4, the Contracting officer issued email notifications to all offerors to immediately stop accessing the worksheet in question. Id. at 3. On May 9, the agency instructed all offerors to delete the pricing template with the hidden/protected information and to verify that they had complied with the instruction. Id.

The agency reviewed the worksheet to determine whether the agency had inadvertently disclosed proprietary contractor information. The agency found that the hidden IGCE worksheet could be accessed through what the agency describes as a well-known process. Id. at 3. The process of accessing the hidden worksheet, however, does not reveal the portions of the worksheet that contained the password-protected supporting data, including the incumbent contractor information. Id. The agency concluded it was possible to access the password protected data if offerors were to take steps to deliberately bypass that protection. Id. Based on statements requested by the contracting officer and received from the offerors, the agency concluded that although some of the offerors had accessed the hidden worksheet containing the IGCE, none of the offerors executed the steps needed to access the password-protected incumbent contractor salary data in the worksheet. COS (B-413860.4, B-413860.6) at 26; AR, Tab 38, PIA Investigation Report, at 3.

The contracting officer prepared an investigation report addressing whether the inclusion of the hidden worksheet violated the PIA. The contracting officer concluded that the IGCE itself was not “source selection information” within the meaning of the PIA because it was not an item listed in the definition of source selection information in FAR § 2.101 nor otherwise designated by the agency as source selection information. AR, Tab 38, PIA Investigation Report, at 4. With regard to the contractor salary data, the contracting officer explained that certain labor categories for performance locations with a single contractor might be considered proprietary, but that the data had not been accessed by any offeror. Id. The contracting officer therefore concluded that “no proprietary data or source selection information was accessed by any of the offerors in the SITEC II acquisition.” Id. at 5.

Nonetheless, the contracting officer’s PIA investigation report also recommended that the agency release the IGCE to all offerors, without the supporting data (including the contractor salary data), to ensure that all offerors had equal access to the IGCE. Id.; COS (B-413860.4, B-413860.6) at 27. On June 7, the agency released a revised pricing template which disclosed, among other things, the IGCE salary ranges. AR, Tab 8, RFP attach. C, EOM Pricing Template, June 7, 2017. The revised RFP advised offerors that “[t]he Government has provided a realistic and reasonable salary range to obtain qualified individuals while ensuring the ability to recruit and retain a stable workforce, based on the Independent Government Cost Estimate (IGCE).” AR, Tab 10, Revised RFP, June 7, 2017, at 8 (emphasis in original).

Also on June 7, the contracting officer sent a letter to each offeror advising that the agency had investigated whether the inclusion of the hidden IGCE worksheet in the pricing template had resulted in a PIA violation. AR, Tab 40, Letters from Agency to Offerors, June 7, 2017, at 1-2.¹¹ The contracting officer advised that he had concluded that, based on statements from the offerors, none of them had accessed the labor rate information in the worksheet. Id. For this reason, the contracting officer advised the offerors that “there was no impact on the acquisition.” Id. at 2.

On June 12, CACI wrote to the contracting officer, expressing its view that the revised IGCE released to all offerors “contained data that was, we believe, derived from CACI proprietary information,” and that disclosure of this information was improper. AR, Tab 41, Letter from CACI to Contracting Officer, June 12, 2017, at 1-2. In this regard, the protester argued that “[i]t is easy for a competitor to determine [DELETED] CACI’s incumbent contract and thereby identify CACI proprietary compensation information,” and that “we object to SOCOM’s release of the IGCE.” Id. at 2.

On June 14, the contracting officer responded to CACI’s letter by reiterating that there had not been a violation of the PIA. AR, Tab 41, Email from Contracting Officer to CACI, June 14, 2017, at 3. The contracting officer also advised that he did not agree with CACI that the IGCE resulted in the disclosure of the firm’s proprietary compensation information. Id. at 3-4.

CACI argues that inclusion of the hidden/protected information in the pricing template provided to offerors on May 1 resulted in a prejudicial violation of the PIA because the information regarding contractor rates could have been accessed (particularly for [DELETED]), and that information could have given insight into CACI’s pricing on the incumbent contract. The protester contends that the agency did not adequately or reasonably assess whether offerors gained access to the password-protected information. We conclude that the protester’s challenge to the agency’s finding that there was no PIA violation resulting from the issuance of the pricing template on May 1 is untimely. In this regard, as discussed above, the agency advised all offerors on June 7 that the investigation had been completed and that there was no PIA violation. Although the protester disputed this conclusion and expressed additional concern regarding the potential disclosure of its cost information on June 12, the agency’s June 14 response reiterated the conclusion that there had not been a violation of the PIA and that the agency had properly disclosed the IGCE to all offerors.

Our Bid Protest Regulations provide that protesters must advise agencies of potential PIA violations within 14 days of such violations. 4 C.F.R. § 21.5(d). If the protester disagrees with the agency’s response to the PIA allegation, the protester must file a protest with our Office within 10 days. Systematic Mgmt. Servs., Inc., B-250173, Jan. 14, 1993, 93-1 CPD ¶ 41 at 8; see 4 C.F.R. § 21.2(a)(2). Here, because the agency clearly advised the protester that it had found no PIA violation, the protester was

¹¹ Citations are to identical pages in the letters to each offeror.

required to file a protest with our Office challenging the agency's conclusion within 10 days. Id.

Additionally, to the extent CACI also contends that the issuance of the revised IGCE to offerors on June 7 was improper, this argument is also untimely. Our Bid Protest Regulations state that where alleged improprieties which do not exist in the initial solicitation are subsequently incorporated into the solicitation, they must be protested not later than the next closing time for receipt of proposals following the incorporation. 4 C.F.R. § 21.2(a)(1). Because the protester did not file a protest with our Office prior to the time for receipt of revised proposals, on August 8, any arguments concerning the revised IGCE issued on June 7 are untimely. We therefore find no basis to sustain the protest.¹²

CACI's Allegation of Bias Concerning Agency Evaluator

Next, CACI argues that USSOCOM failed to reasonably address what the protester contends was the impact of a biased agency employee on the reevaluation of proposals during the corrective action. For the reasons discussed below, we find no basis to sustain the protest.

During the corrective action in response to CACI's and GDOS's initial protests, USSOCOM investigated whether CACI employees had violated agency procedures by using information downloaded from the agency's secret internet protocol (SIPR) network to support its protest. COS (B-413860.4, B-413860.6) at 23; AR, Tab 62, Decl. of Former (Technical Evaluation Team) TET Lead, Nov. 14, 2017, at 1. The investigation "centered on a USSOCOM [for official use only] document that was removed from the USSOCOM secured network and forwarded to CACI's counsel, without the permission or knowledge of USSOCOM personnel." COS (B-413860.4, B-413860.6) at 23. That document was subsequently provided to GAO in CACI's initial protest on March 13, 2017. AR, Tab 62, Decl. of Former TET Lead, Nov. 14, 2017, at 1. On May 10, the agency issued a show cause letter to CACI regarding concern that its employees had

¹² As the intervenor notes, our Office explained in a decision concerning a similar set of facts that the PIA prohibits "knowing" disclosure of offeror bid or proposal information "before the award of a . . . contract to which the information relates." S&K Aerospace, LLC, B-411648, Sept. 18, 2015, 2015 CPD ¶ 336 at 6 (citing 41 U.S.C. § 2102(a)(1)). In that decision, which also concerned an inclusion of hidden information in a pricing spreadsheet provided to offerors, we concluded that a contractor's cost or pricing information on the incumbent contract is not "bid or proposal information" for the procurement challenged in the protest, *i.e.*, the competition for a different contract, and that the inadvertent disclosure of this information by the agency did not result in a PIA violation. Id. at 6-7 (citing Engineering Support Personnel, Inc., B-410448, Dec. 24, 2014, 2015 CPD ¶ 89 at 6). Because we conclude that the protester's argument is untimely, we need not also address whether the protest here concerns the same kind of information found not to be covered by the PIA in S&K Aerospace, LLC.

downloaded documents from the agency's SIPR network and provided them to CACI's outside counsel for use in the first protest. COS (B-413860.4, B-413860.6) at 28; AR, Tab 62, Decl. of Former TET Lead, Nov. 14, 2017, at 1. The agency found that "[w]hile these actions were arguably in violation of the Agency's policies, the consequences thereof were deemed not to merit further action."¹³ COS (B-413860.4, B-413860.6) at 28.

USSOCOM's Insider Threat Working Group investigated the removal of the document. AR, Tab 62, Decl. of Former TET Lead, Nov. 14, 2017, at 2. One of the members of the working group who was asked to assist with the investigation also served as the TET lead for the SITEC II evaluation. Id. at 1. The TET lead states that on June 28, he recused himself from the SITEC II evaluation on his own initiative, based on the concern for "the potential perception of conflicting duties as a member of the" team investigating the alleged improper access and disclosure of documents by CACI employees. Id. Offerors' proposal revisions in response to the corrective action were due by July 21, and the TET lead was not involved in those evaluations. COS (B-413860.4, B-413860.6) at 23.

CACI argues that USSOCOM's actions during corrective action were inadequate to remedy the bias stemming from the former TET lead's actions. In this regard, the protester contends that the TET lead's involvement with the investigation of CACI's actions, and the fact that no further action was taken by the agency against CACI with regard to the investigation, shows that the individual's actions "were prompted by improper motives." CACI Protest at 17 n.5. The protester further contends that the individual's recusal demonstrates bias, and that the recusal was inadequate to remedy that bias. CACI's Comments, Nov. 6, 2017, at 34-35; CACI's Supp. Comments, Nov. 21, 2017, at 6-7.

We conclude that CACI has not demonstrated that the TET lead was biased against the protester. Government officials are presumed to act in good faith and we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Marinette Marine Corp., B-400697 et al., Jan 12, 2009, 2009 CPD ¶ 16 at 29. A protester's contention that procurement officials were motivated by bias or bad faith must be supported by clear and convincing evidence. Bannum, Inc., B-411340, July 8, 2015, 2015 CPD ¶ 213 at 4.

Here, the protester contends that the TET lead must have been biased against CACI because he assisted with an investigation that ultimately found no basis to take action against the protester; the protester further contends that the recusal by this individual is, in effect, a concession of bias by the agency. The agency does not, however, concede that the TET was biased or that the recusal was the result of bias. Instead, the agency

¹³ CACI contends that it did not download the documents, and that they were instead provided by agency officials. CACI's Comments, Nov. 6, 2017, at 36 n.17. For the reasons discussed herein, we need not resolve the merits of this matter.

states that the recusal was out of an abundance of caution intended to avoid even the appearance of bias. COS (B-413860.4, B-413860.6) at 23. The agency also notes that upon receipt of the revised proposals, “those proposal[s] were evaluated in their entirety.” Id.

We conclude that the agency’s actions here do not constitute an admission of bias. We also conclude that the facts here do not show clear and convincing evidence that the former TET chair’s actions reflected bias or bad faith. Instead, the record provided by the agency reasonably establishes that the individual participated in an investigation of CACI, but subsequently recused himself prior to the evaluation of offerors’ revised proposals to avoid any appearance of a conflict between those two roles.

CACI also contends that the former TET chair’s actions prior to his recusal should be presumed to have prejudicially affected the evaluation of the revised proposals because, even though the individual did not participate in those evaluations, he might have somehow tainted the process by communicating with staff prior to his recusal. In the absence of clear and convincing evidence of bad faith on the part of the TET chair, we find no merit to the protester’s additional speculation about the ways in which bias might have affected the procurement. In sum, we find no basis in the record here to sustain the protest based on the protester’s allegations of bias.

Evaluation of CACI’s Key Personnel

Next, CACI argues that USSOCOM unreasonably assessed a weakness to its proposal concerning key personnel under the technical and management evaluation factor. The protester also contends that the awardee’s proposal had the same concern and that the agency therefore treated the offerors unequally in this regard. For the reasons discussed below, we conclude that the protester is not an interested party to raise this issue.

Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556, only an “interested party” may protest a federal procurement. That is, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a)(1). Determining whether a party is interested involves consideration of a variety of factors, including the nature of issues raised, the benefit or relief sought by the protester, and the party’s status in relation to the procurement. RELM Wireless Corp., B-405358, Oct. 7, 2011, 2011 CPD ¶ 211 at 2. A protester is not an interested party to challenge an agency’s evaluation where, even if the challenge has merit, another offeror would be in line for award ahead of the protester. AAR Airlift Grp., Inc., B-412789.2, B-412790.2, June 2, 2016, 2016 CPD ¶ 141 at 8.

CACI argues that USSOCOM unreasonably assessed a weakness to its proposal concerning the protester’s approach to providing key personnel who have the appropriate security clearances to perform the work. AR, Tab 25, SSEB Report, at 13-14. The protester argues that the weakness was inconsistent with the RFP’s

requirements and that the agency's rationale for the weakness was not supported by the contemporaneous record. The protester also argues that Jacobs' proposal relied on a similar approach and thus, even if assessment of the weakness to CACI's proposal was reasonable, the agency failed to treat the offerors equally.

We conclude that the protester is not an interested party to challenge the assessment of the weakness because, even if the protester's arguments had merit, CACI would not be in line for award ahead of GDOS. For the technical and management evaluation factor, CACI's proposal was assigned a green/moderate risk rating based on the weakness regarding key personnel and one strength. AR, Tab 25, SSEB Report, at 13-14. GDOS's proposal was assigned a purple/low risk rating, based on two strengths and no weaknesses. Id. at 19. Both offerors' proposals were assigned substantial confidence ratings for the past performance factor. Id. at 13, 19. CACI's evaluated cost/price was \$818.7 million and GDOS's evaluated cost/price was \$781.3 million. Id. In the award decision, the SSA stated that "[t]he proposals submitted by CACI and [offeror 4] are quite good, but they are inferior to GDOS's technical proposal," and that "[t]he GDOS technical proposal is better than CACI's and [offeror 4's] technical proposals, but is still inferior to and overwhelmed by Jacobs's technical proposal." AR, Tab 27, SSDD, at 6.

None of the other challenges raised by CACI, discussed above, have merit. Thus, neither removal of the weakness from CACI's proposal or assessment of the same weakness to Jacobs' proposal would result in CACI's proposal being in line for award ahead of GDOS's or Jacobs' proposals. In this regard, the record shows that GDOS's proposal was assigned one more strength than CACI's proposal, and was not assigned any weaknesses. AR, Tab 25, SSEB Report, at 13-14, 19. GDOS's evaluated cost/price was also \$37.5 million lower than CACI's. Id. at 13, 19. Further, assessment of the same weakness regarding key personnel to Jacobs' proposal would not result in CACI being in line for award ahead of Jacobs, given the 13 strengths assigned to the awardee's proposal and its \$40.1 million evaluated cost/price advantage as compared to CACI's proposal. AR, Tab 25, SSEB Report, at 25-30. Under these circumstances, we conclude that CACI is not an interested party to challenge the assessment of the weakness. See AAR Airlift Grp., Inc., supra.

Undisclosed Evaluation Criteria

Next, GDOS argues that USSOCOM's characterization of the nature of the RFP's requirements was inconsistent with the terms of the solicitation. In this regard, the protester argues that the agency's characterization of the solicitation requirements demonstrates that the agency used unstated evaluation criteria and that the offerors were therefore not competing on an equal basis. We find no basis to sustain the protest.

It is a fundamental principle of government procurement that competitions must be conducted on an equal basis, that is, offerors must be treated equally and be provided with a common basis for the preparation of their proposals. CenturyLink QGS, B-408384, Aug. 27, 2013, 2013 CPD ¶ 217 at 8. Contracting officials may not

announce in the solicitation that they will use one evaluation scheme and then follow another without informing offerors of the changed plan and providing them an opportunity to submit proposals on that basis. Applied Research Solutions, B-414719, Aug. 28, 2017, 2017 CPD ¶ 276 at 5-6.

Here, GDOS notes that USSOCOM's OCI investigation characterized the SITEC I contracts as containing performance-based requirements, and characterized the SITEC II solicitation as seeking a "staff augmentation contract." AR, Tab 33, OCI Investigation Report, at 1. In this regard, the agency distinguished between the SITEC I contracts, which required offerors to propose their own level of staffing and approaches to the agency's requirements, and the SITEC II solicitation, wherein the agency specified the number and qualifications of staff to be provided, and requested proposals for performing the agency's requirements using the government's equipment and following government processes. Id.; see RFP at 8 ("The Government has provided labor categories and the number of required FTEs for the task order.").

GDOS contends that the solicitation did not advise offerors that the RFP required a staff augmentation approach, and therefore did not advise offerors as to the basis for the agency's evaluation and award decision. The protester does not dispute the agency's characterization of the SITEC II solicitation as requiring offerors to provide staffing based on the agency's established levels, or that the government would provide the required equipment, tools, and processes for performance of the agency's requirements. Instead, the protester contends that the agency's characterization reflects an undisclosed emphasis on offerors' staffing approaches.

As discussed above, the technical and management evaluation factor was to be evaluated based on the following six areas: (1) transition plan, (2) recruitment and retention plan, (3) management organizational structure and integration with USSOCOM, (4) reliable, flexible, and scalable worldwide services, (5) enterprise modernization, and (6) quality control plan. RFP at 13-14. GDOS contends that the agency's emphasis on staffing caused the agency to ignore offerors' approaches to the non-personnel areas of the technical and management approach evaluation factor, specifically (1) reliable, flexible, and scalable worldwide services, and (2) enterprise modernization. The protester states that, had it known of this alleged undisclosed emphasis on the personnel requirements, it would have devoted more resources to those areas and less to the non-personnel requirements.

With regard to the reliable, flexible, and scalable worldwide services element and the enterprise modernization element, however, the record shows that the agency assigned Jacobs's proposal strengths in each of those areas (two of the 13 overall strengths assigned). AR, Tab 25, SSEB Report, at 29-30. Thus, the record does not support the protester's contention that the agency ignored these areas of the offerors' proposals, or that the protester was prejudiced by devoting resources to preparing its proposal in those areas. The fact that the protester was not also assigned strengths in these areas does not demonstrate that the agency failed to evaluate them or discounted their

importance in a manner inconsistent with the solicitation. On this record, we find no basis to sustain the protest.

Evaluation of the Realism of Jacobs' Proposed Costs

Next, GDOS argues that USSOCOM unreasonably evaluated the realism of Jacobs' proposed costs. In this regard, the protester argues that the difference between the offerors' proposed costs/prices (\$781.3 million for GDOS vs. \$778.6 million for Jacobs) shows that the awardee's proposed labor costs were unrealistic. For the reasons discussed below, we find no basis to sustain the protest.

When an agency evaluates a proposal for the award of a cost-reimbursement contract, an offeror's proposed costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. FAR §§ 15.305(a)(1), 15.404-1(d); CSI, Inc.; Visual Awareness Techs. & Consulting, Inc., B-407332.5 et al., Jan. 12, 2015, 2015 CPD ¶ 35 at 5-6.¹⁴ Consequently, the agency must perform a cost realism analysis to determine the extent to which an offeror's proposed costs are realistic for the work to be performed. FAR § 15.404-1(d)(1). An agency is not required to conduct an in-depth cost analysis, or to verify each and every item in assessing cost realism; rather, the evaluation requires the exercise of informed judgment by the contracting agency. Cascade Gen., Inc., B-283872, Jan. 18, 2000, 2000 CPD ¶ 14 at 8; see FAR § 15.404-1(c). Our review of an agency's cost realism evaluation is limited to determining whether the cost analysis is reasonable; a protester's disagreement with the agency's judgment, without more, does not provide a basis to sustain the protest. Imagine One Tech. & Mgmt., Ltd., B-412860.4, B-412860.5, Dec. 9, 2016, 2016 CPD ¶ 360 at 14-15.

The RFP required offerors to provide direct labor rates and salaries for all labor categories. RFP at 8. The solicitation, as amended on June 7, advised offerors of the following with regard to proposed salaries:

The Government has provided a realistic and reasonable salary range to obtain qualified individuals while ensuring the ability to recruit and retain a stable workforce, based on the Independent Government Cost Estimate (IGCE). The IGCE assumed a blended workforce whose average salary based on position description by location falls within the stated salary range. If an offeror or any subcontractor proposes an individual salary outside the range listed in [the pricing template], that individual salary will be flagged with "justification needed."

¹⁴ Where, as here, an agency issues a solicitation under the provisions of FAR subpart 16.5 that provides for the evaluation of cost realism, our Office evaluates agencies' cost realism evaluations under the provisions of FAR part 15. CenterScope Techs., Inc., B-411293, B-411293.2, July 8, 2015, 2015 CPD ¶ 234 at 5 n.6.

Id. at 8-9.

USSOCOM found that, after discussions, all offerors' proposed costs were reasonable and realistic and required no adjustments for cost realism. AR, Tab 27, SSDD, at 4. With regard to Jacobs, the agency issued 13 evaluation notices during discussions regarding the awardee's proposed costs. AR, Tab 24, Jacobs Cost Report, at 2. The agency's evaluation of Jacobs' final revised proposal found that [DELETED] of the awardee's [DELETED] positions were proposed at direct labor rates that were [DELETED] minimum of the IGCE, and identified an additional [DELETED] positions where the rates were within [DELETED] percent of the minimum. Id. at 8.

GDOS argues that USSOCOM's evaluation of Jacobs' proposed costs was unreasonable because the agency did not adjust any of the awardee's direct labor rates for the [DELETED] positions that were proposed with salaries [DELETED] the IGCE minimums. In this regard, the protester notes that the awardee's proposal stated that certain labor categories [DELETED] would require payment at the [DELETED] percentile of the awardee's survey data, which was provided by an outside consultant. AR, Tab 15, Jacobs Revised Price Proposal, at 15. The protester argues that, because the awardee recognized the importance of higher salaries for certain positions, the agency should have more carefully scrutinized whether the awardee's proposed salaries [DELETED] of the IGCE were realistic.

As our Office has explained, agencies may reasonably rely on independent cost estimates, provided those estimates are reasonable. See Energy Enter. Solutions, LLC; Digital Mgmt., Inc., B-406089 et al., Feb. 7, 2012, 2012 CPD ¶ 96 at 7-9; Wyle Labs., Inc., B-311123, Apr. 29, 2008, 2009 CPD ¶ 96 at 7-8. Here, GDOS does not contend that the IGCE salary information provided by the agency in the solicitation was flawed. Similarly, the protester does not provide any basis for concluding that the agency should not have relied on the salary data, which the RFP stated represented a "realistic and reasonable salary range." RFP at 8. Although the protester contends that the agency should have requested the awardee provide additional justification of its proposed salaries, the RFP clearly provided that additional justifications would be required only where the proposed salaries were outside the ranges set forth in the IGCE. Id. On this record, we find no basis to sustain the protest.

Evaluation of GDOS' and Jacobs' Past Performance

Finally, GDOS argues that USSOCOM's past performance evaluation failed to reflect what the protester contends was its superior performance record as compared to Jacobs' performance record. For the reasons discussed below, we agree with the protester that the evaluation record does not clearly show that the award decision considered more than the adjectival ratings assigned to the offerors' proposals. We conclude, however, that the record does not demonstrate that GDOS could have been prejudiced by this error, and we therefore find no basis to sustain the protest.

An agency's evaluation of past performance is a matter of agency discretion which we will not disturb unless the agency's assessments are unreasonable, inconsistent with the solicitation criteria, or undocumented. Engility Corp., B-413120.3 et al., Feb. 14, 2017, 2017 CPD ¶ 70 at 10. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that an evaluation was improper. Computer Scis. Corp., B-409386.2, B-409386.3, Jan. 8, 2015, 2015 CPD ¶ 34 at 12. Agencies may not base their selection decisions on adjectival ratings alone, since such ratings serve only as guides to intelligent decision making; source selection officials are required to consider the underlying bases for ratings, including the advantages and disadvantages associated with the specific content of competing proposals. CPS Prof'l Servs., LLC, B-409811, B-409811.2, Aug. 13, 2014, 2014 CPD ¶ 260 at 5. Where an agency concludes that offerors' proposals are equal as to merit or benefits, they must explain the basis for this conclusion rather than simply relying on the adjectival ratings assigned. See Clark/Foulger-Pratt JV, B-406627, B-406627.2, July 23, 2012, 2012 CPD ¶ 213 at 11.

GDOS argues that although both the protester's and awardee's proposals were assigned substantial confidence ratings for the past performance factor, the protester's past performance record provided more references (five for GDOS vs. four for Jacobs) and that these references had higher overall ratings as compared to the awardee's references (four substantial confidence ratings and one satisfactory confidence rating for GDOS vs. three substantial confidence ratings and one satisfactory confidence rating for Jacobs). See AR, Tab 25, SSEB Report, at 21, 31.

The SSDD provided a detailed explanation of the reasons why the agency found Jacobs' proposal to be "far superior" to GDOS's proposal under the technical and management evaluation factor. AR, Tab 27, SSDD, at 6. For the past performance factor, the SSEB report explained the basis for each offeror's past performance rating; this report, however, did not compare the offerors' past performance records. AR, Tab 25, SSEB Report, at 14-15, 20-21, 30-31, 36-37, 40. Neither the SSAC award recommendation nor the SSDD compared the offerors' respective past performance records; rather, the award recommendation and award decision stated that each offeror's proposal was assigned a substantial confidence rating for the past performance factor. AR, Tab 26, SSAC Award Recommendation, at 3-5; Tab 27, SSDD, at 3-4.

On this record, we agree with GDOS that the agency's contemporaneous evaluation does not show whether the agency identified or otherwise considered differences between the offerors' past performance records. The agency's repeated references to the assignment of substantial confidence ratings to all offerors' proposals suggests that the agency may have found the offerors to be equal under this evaluation factor. The evaluation record, however, does not provide an explanation for why the agency concluded that the offerors' past performance records were equal.

Despite this failure to adequately explain the basis of the agency's evaluation, we conclude that there is no possible prejudice to GDOS. In this regard, competitive

prejudice is an essential element of a viable protest, and we will sustain a protest only where the protester demonstrates that, but for the agency's improper actions, it would have had a substantial chance of receiving the award. DRS ICAS, LLC, B-401852.4, B-401852.5, Sept. 8, 2010, 2010 CPD ¶ 261 at 21.

Here, the RFP provided that the technical and management evaluation factor was more important than the past performance evaluation factor. RFP at 11. The record shows that Jacobs' proposal was "far superior" to GDOS's proposal under the technical and management evaluation factor, and the awardee's evaluated cost/price was lower than the protester's. AR, Tab 27, SSDD, at 6. The protester does not argue that Jacobs' past performance merited a rating lower than substantial confidence; instead, the protester contends that its own performance record should have been considered superior to Jacobs' performance record, based on the number of references and ratings, and that this advantage should have factored into the award decision.

Given the strengths assigned by the agency to Jacobs' proposal under the most important evaluation factor, its lower evaluated cost/price, and the lack of a significant difference between the ratings assigned to the offerors' past performance references, we find no basis to conclude that the absence of an explanation for the agency's apparent treatment of the offerors' past performance records as equivalent demonstrates that GDOS was prejudiced. In other words, the record does not demonstrate a reasonable possibility that GDOS's past performance was so significantly superior to Jacobs so as to outweigh Jacobs' "far superior" technical proposal and lower price. We therefore find no basis to sustain the protest.

The protests are denied.

Thomas H. Armstrong
General Counsel