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# Decision

**Matter of:** Federal Acquisition Services Alliant JV, LLC

**File:** B-415406.2; B-415406.3

**Date:** April 11, 2018

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Gunjan R. Talati, Esq., Lawrence M. Prosen, Esq., Christian F. Henel, Esq., Ethan M. Knott, Esq., and Nicholas Nieto, Esq., Kilpatrick Townsend & Stockton LLP, for the protester.

Damien C. Specht, Esq., Ethan E. Marsh, Esq., and Sandeep N. Nandivada, Esq., Morrison & Foerster LLP, for Octo Consulting Group, Inc., the intervenor.

Major Adam Kama, and Scott N. Flesch, Esq., Department of the Army, for the agency.

April Y. Shields, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. Protest challenging the technical acceptability of awardee's non-cost/price proposal for allegedly failing to satisfy a material solicitation requirement is denied where the solicitation did not mandate proposals to specifically address such a requirement and agency reasonably assigned a weakness in accordance with the terms of the solicitation.
  2. Protest challenging an agency's evaluation of awardee's and protester's non-cost/price proposals is denied where agency's evaluation was reasonable, documented, and in accordance with the terms of the solicitation.
  3. Protest challenging an agency's evaluation of awardee's cost/price proposal is denied where agency's evaluation was reasonable, documented, and in accordance with the terms of the solicitation.
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## DECISION

Federal Acquisition Services Alliant JV, LLC (FASA), of Beltsville, Maryland, protests the issuance of a task order to Octo Consulting Group, Inc., of Reston, Virginia, under task order proposal request (TOPR) No. JKB-17-0001, by the Department of the Army for information technology support services. The protester challenges the agency's

evaluation of the protester's and awardee's non-cost/price proposals and the awardee's cost/price proposal.<sup>1</sup>

We deny the protest.

## BACKGROUND

On May 12, 2017, the agency issued the solicitation as a total small business set-aside under the General Services Administration (GSA) Alliant Governmentwide Acquisition Contract vehicle. The procurement was conducted pursuant to Federal Acquisition Regulation (FAR) subpart 16.5. The solicitation contemplated the award of a single fixed-price task order to provide information management, and information technology, development and support services for the Defense Centers of Excellence (DCoE) for psychological health and traumatic brain injury at their offices in Silver Spring, Maryland and three centers. AR, Tab 3, TOPR, at 1; AR, Tab 6, Amendment 0001 with Updated Performance Work Statement (PWS), at 1. On June 2, the agency issued an amendment that revised the TOPR and the PWS, which provided the performance requirements for the task order. Amendment 1 at 1.

The solicitation specified that a fixed-price task order would be issued to the contractor whose proposal was evaluated as offering the best value, based on a tradeoff among price and technical factors.<sup>2</sup> TOPR at 22. The solicitation further specified that technical factors were more important than price, although price would become more important in the tradeoff analysis if the technical factors were evaluated as closer to equal. Id.

The technical factors, in descending order of importance, were technical approach, management approach, experience, quality control approach, and past performance. TOPR at 22. The solicitation provided that, under the first four technical factors, proposals would be assigned adjectival ratings--outstanding, good, acceptable, marginal, or unacceptable--as well as an overall adjectival rating that reflected the evaluation of all of those factors. Id. at 22, 26. Under the past performance factor, proposals would be evaluated on the relevancy of the contractor's past performance as well as the level of confidence, using quality ratings of substantial confidence, satisfactory confidence, limited confidence, no confidence, or a neutral rating of unknown performance. Id. at 27.

Of relevance here, with regard to the technical approach factor, the solicitation instructed offerors to "submit a written technical approach which effectively

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<sup>1</sup> FASA refers to itself as "Team FASA" and states in its proposal that it is a joint venture with [redacted]. Agency Report (AR), Tab 8, FASA proposal cover letter.

<sup>2</sup> The solicitation used the terms "cost/price" and "non-cost/price" factors. For the purposes of clarity, we refer to "price" and "technical" factors in this decision.

demonstrates the Offeror's clear understanding of all the [PWS] in Attachment 1 tasks" and to "describe, in detail, its technical approach and overall ability to provide Information Technology (IT) support services for the [DCoE]." TOPR at 2. The solicitation further advised that proposals "will be evaluated to the degree to which the offeror's technical approach demonstrates . . . the soundness of the offeror's approach for operating and maintaining the entire DCoE network infrastructure with associated network support [in accordance with] the PWS," to include desktop and end user support services. Id. at 22-23. The 47-page PWS described the scope of work, objectives, task and resources that the contractor would be required to provide for all services under the resulting contract. PWS at 1. Among the identified tasks, the PWS described "BASE Task 2.2.4 – Desktop and End User Support services" as follows:

The contractor shall provide customer assistance to DCoE users of all workstation software systems on a 24x7 basis, three hundred and sixty-five (365) days per year. This shall include a minimum of staffed offices at the DCoE HQ/Centers facilities in Silver Spring, MD during the hours of 0700 through 1800 local time. Support outside these hours may be provided in any manner deemed suitable to ensure a call back with a response to calls within thirty (30) minutes of initial call.

Amendment 1 at 16.

With respect to the price factor, the solicitation required offerors to include proposal price, assumptions, and a price breakdown by labor categories, to include fully burdened rates and labor hours for the base period and each option period. TOPR at 5. Although the solicitation included the agency's estimate of an approximate level of effort to accomplish the tasks identified in the PWS, it also explicitly advised that this estimate was "not to be construed as either mandatory or necessarily the best technical approach," and that offerors were "not bound to propose these labor categories or quantities." Id. at 6. The solicitation further advised that price would be "evaluated for fairness and reasonableness" in terms of level of effort, consistency with the technical approach, and fairness and reasonableness of proposed prices. Id. at 24.

On or before June 19,<sup>3</sup> the agency received eight proposals. AR, Feb. 15, 2018, at 6. Consistent with the terms of the solicitation, FASA's and Octo's proposals were evaluated as follows:

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<sup>3</sup> While proposals were initially due by June 12, the amendment issued on June 2 extended the deadline to June 19. Amendment 1 at 1.

	<b>FASA</b>	<b>Octo</b>
<b>Overall Rating<sup>4</sup></b>	<b>GOOD</b>	<b>GOOD</b>
Technical Approach	Good	Good
Management Approach	Acceptable	Acceptable
Experience	Outstanding	Outstanding
Quality Control Approach	Acceptable	Acceptable
Past Performance--Relevance	Relevant	Relevant
Past Performance--Confidence	Satisfactory Confidence	Satisfactory Confidence
<b>Overall Evaluated Price</b>	<b>\$30,452,694</b>	<b>\$24,932,732</b>

AR, Tab 11, Award Decision Memorandum (ADM), at 8-9.

In evaluating the offerors' price proposals for reasonableness, the agency used both an independent government cost estimate (IGCE) and an average labor rate of the proposals rated acceptable or higher overall as points of comparison.<sup>5</sup> ADM at 93-94. To develop the IGCE, the agency used median rates paid for identical services under the GSA Alliant Benchmarked Labor Rates, escalated by 3.5 percent per year based on industry averages as well as historical rates paid on previous contracts. Id. at 93.

Of relevance here, with regard to Octo's price proposal, the agency found that Octo's proposed average labor rate was [redacted] percent higher than the average labor rate (which was within the range of [redacted] percent that the agency had established as acceptable) and [redacted] percent lower than the IGCE. Id. at 97. In addition, the agency "found no inconsistent or over/under inflated rates," id., and concluded:

Octo's proposed level of effort, including the labor mix and number of hours, [is] based on reasonable assumptions. The proposed price is consistent with the technical approach, pricing is consistent with and reflects the proposed staffing requirement for all years. Octo's proposed labor price was analyzed/evaluated and found to be fair and reasonable. Based on the foregoing, Octo's total proposed price is determined to be fair and reasonable.

Id. at 98.

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<sup>4</sup> This represents the overall consensus rating for all technical factors except past performance.

<sup>5</sup> To develop the average labor rate, the agency first established an average labor rate for each offeror whose proposal was rated acceptable or higher overall (by dividing the total proposed price by the number of labor hours proposed), then averaged the rates for the four such proposals, and finally established an acceptable range of [redacted] percent above or below this average labor rate. ADM at 94.

After completing its evaluation of the proposals, the agency conducted a tradeoff analysis between FASA's and Octo's proposals. These two proposals each received the same overall "good" rating, and received identical ratings in every individual technical factor; and both were assessed "a multitude of strengths with few weaknesses and low risk." ADM at 110. The Source Selection Authority (SSA) noted that FASA's proposal overall had "more technical merit . . . especially in experience and management approach (slightly over Octo's more meritorious technical approach)," but recognized that FASA's price was 22 percent higher than Octo's. Id. The SSA concluded that "it would not be in the Government's best interest to pay a substantially higher price for a slight technical gain when the performance risk of both proposals is low. Due to a combination of its technical merits and its lower priced proposal, Octo is a better value to the Government, and is the recommended successful offeror." Id.

On September 26, Octo was selected for award and, three days later, FASA filed a protest with our Office, challenging the agency's evaluations and award decision. On October 27, the Army announced that it would take corrective action by reevaluating the proposals and making a new source selection decision, and our Office dismissed that protest as academic. Federal Acquisition Servs. Alliant JV, LLC, B-415406, Nov. 1, 2017 (unpublished decision). On January 10, 2018, Octo was again selected for award, and this protest followed.<sup>6</sup>

## DISCUSSION

FASA protests that the agency failed to properly evaluate FASA's and Octo's technical proposals and failed to properly evaluate Octo's price proposal.<sup>7</sup> As discussed below, none of FASA's allegations provides a basis for sustaining its protest.<sup>8</sup>

### Technical Evaluation of Octo's Proposal

First, FASA contends that Octo's proposal should have been found unacceptable for failing to address how it would meet a "material solicitation requirement," specifically, the "Desktop and End User Support services" task in the PWS to "provide customer

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<sup>6</sup> FASA filed this protest on January 16, 2018. Following its receipt of various documents provided in connection with the agency's response to that protest, FASA filed a supplemental protest on February 26.

<sup>7</sup> The task order at issue is valued in excess of \$10 million. Accordingly, our Office has jurisdiction to consider the protest. 41 U.S.C. § 4106(f).

<sup>8</sup> In its various protest submissions, FASA has raised arguments that are in addition to, or variations of, those specifically discussed herein, including allegations that the agency engaged in disparate treatment of offerors; that the agency conducted a flawed best-value tradeoff and made an improper source selection decision; and that the agency failed to implement meaningful corrective action. We have reviewed all of FASA's arguments and find no basis to sustain its protest.

assistance to DCoE users of all workstation software systems on a 24x7 basis, three hundred and sixty-five (365) days per year.” Supp. Protest, Feb. 26, 2018, at 2; Amendment 1 at 16. FASA complains that it was unreasonable for the agency to have assigned a “weakness” instead of a “deficiency” to Octo in this regard.<sup>9</sup>

The agency responds that fully addressing the 24/7/365 requirement was not a material requirement and, further, the task itself was one of a number of requirements in the PWS and one subcomponent of the larger desktop and end user support requirement. Supp. AR, Mar. 7, 2018, at 9-10. The agency points out that “the solicitation specifically called for evaluators to make judgments about the degree of risk posed by an offeror’s failure to adequately address particular requirements” and provided for evaluators to use a graduated scale of weaknesses, significant weaknesses, and deficiencies consistent with their judgments. *Id.* at 11. The solicitation provided that proposals would be evaluated to assess “the degree to which the offeror’s technical approach demonstrates . . . the soundness of the offeror’s approach for operating and maintaining the entire DCoE network infrastructure with associated network support in accordance with the PWS” and instructed offerors to prepare their proposals accordingly. TOPR at 2, 22-23.

The agency further asserts that, “consistent with the solicitation, the agency determined [the] awardee’s failure to adequately address the 24/7/365 requirement increased its risk of unsuccessful contract performance and reasonably cited this subcomponent of [the] awardee’s proposal as a weakness.”<sup>10</sup> Supp. AR at 8. In assessing a weakness here, the Source Selection Evaluation Board (SSEB) found:

The Offeror failed to adequately address the requirements related to desktop and end-user requirement for 24/7/365 support. Failure to adequately address this component for the desktop and end-user support represents a flaw in the proposal that increases the risk of unsuccessful contract performance.

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<sup>9</sup> FASA also challenged the agency’s evaluation of Octo’s technical proposal under the past performance factor, but later withdrew this protest allegation. Protester’s Supp. Comments, Mar. 12, 2018, at 2 n.1.

<sup>10</sup> The solicitation provided the following definitions:

Weakness: A flaw in the proposal that increases the risk of unsuccessful contract performance.

Deficiency: A material failure of a proposal to meet a Government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level.

TOPR at 27.

AR, Tab 10, SSEB Confirmation of Final Consensus Evaluation, at 21; ADM at 28.

The contracting officer, who also served as the SSA, explained the agency's review as follows:

Octo's proposal states that support would be provided but did not directly state that support would be provided on a 24/7/365 basis. What informed the Army that Octo understood and acknowledged the requirement was its proposed level of effort (as evidence in their proposed Staffing Matrix) . . . commensurate to providing 24/7/365 support.<sup>11</sup> Octo also stated that they would be able to respond to 97% of all calls within 15 minutes . . . . The staffing approach proposed by Octo is indicative with other offerors' proposed staffing approaches for the required 24/7/365 support for this PWS task area. Both Octo's proposed level of effort and recognition of the level of effort to respond to calls quickly convinced the Army that they understood the requirement but the lack of recognition in their technical approach was identified as a flaw (but not rising to the level of a material failure) in their proposal as noted in the ADM.

AR, Tab 13, Supp. Contracting Officer's Statement (COS), at 1-2.

The evaluation of an offeror's technical proposal is a matter within the agency's broad discretion and our Office will not substitute our judgment for that of the agency; rather, we will examine the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation's stated evaluation criteria and applicable procurement statutes and regulations. DynCorp Int'l LLC, B-411465, B-411465.2, Aug. 4, 2015, 2015 CPD ¶ 228 at 7; Nuclear Prod. Partners LLC; Integrated Nuclear Prod. Sols, LLC, B-407948 et al., Apr. 29, 2013, 2013 CPD ¶ 112 at 21. A protester's disagreement with an agency's evaluation judgments, without more, does not establish that the agency acted unreasonably. Science Applications Int'l Corp., B-413501, B-413501.2, Nov. 9, 2016, 2016 CPD ¶ 328 at 5.

Here, we have reviewed the solicitation and the evaluation record and find no basis to question the reasonableness of the agency's evaluation of Octo's technical proposal under the technical approach factor. The solicitation clearly instructed offerors to "demonstrate" their "understanding" of the PWS and advised that proposals would be evaluated based on "the degree to which" their technical approach demonstrates that approach in accordance with the PWS. TOPR at 2, 22-23. As the SSEB and SSA documented and as the contracting officer further explained,<sup>12</sup> the agency evaluated the

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<sup>11</sup> Octo proposed [redacted] employees to staff the desktop and end user support services task. AR, Tab 9, Octo Price and Non-Price Proposal, at 8, 98.

<sup>12</sup> FASA argues that the contemporaneous record is absent of any discussion of the factors referenced in the supplemental COS and argues that such references now

(continued...)

degree to which Octo's proposal addressed the desktop and end user support services task, assessed the level of effort demonstrated for the task, and weighed the risks of unsuccessful performance. The agency recognized the lack of detail in Octo's proposal with regard to 24/7/365 coverage and assigned a weakness which, in our view, was both reasonable and consistent with the terms of the solicitation. Accordingly, we deny this basis of protest.

#### Technical Evaluation of FASA's Proposal

FASA also raises numerous challenges to the agency's technical evaluation of its own proposal, specifically under the technical approach, management approach, and quality control approach factors, arguing in each instance that its proposal was entitled to a higher rating. FASA complains that "the agency either failed to read, failed to understand, improperly read or affirmatively misstated the contents of FASA's proposal" and concludes that, if not for these alleged evaluation errors, the agency should have rated its overall technical proposal as "outstanding" instead of "good." Protest at 2; see also Supp. Protest at 2. We have considered all of FASA's arguments in this regard and conclude that none furnishes a basis upon which to sustain the protest; below, we discuss a representative claim.

With regard to the most important technical factor, technical approach, the agency assessed five strengths and no weaknesses, and assigned a rating of "good" to FASA's proposal. FASA argues, however, that three of those strengths should have been significant strengths, because Octo received significant strengths "for essentially the same features." Supp. Protest at 19. For example, FASA challenges the assignment of a strength to FASA and a significant strength to Octo for the "Datacenter Management and Support" task under the technical approach factor. Id.

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"should carry minimal to no weight." Protester's Supp. Comments at 6 n.2, 8 n.3. In reviewing an agency's evaluation, we do not limit our consideration to contemporaneously documented evidence, but instead consider all the information provided, including the parties' arguments, explanations, and any hearing testimony. Remington Arms Co., Inc., B-297374, B-297374.2, Jan. 12, 2006, 2006 CPD ¶ 32 at 10. While we accord greater weight to contemporaneous source selection materials as opposed to judgments made in response to protest contentions, post-protest explanations that provide a detailed rationale for contemporaneous conclusions, and simply fill in previously unrecorded details, will generally be considered in our review of the rationality of selection decisions--so long as those explanations are credible and consistent with the contemporaneous record. AllWorld Language Consultants, Inc., B-414244, B-414244.2, Apr. 3, 2017, 2017 CPD ¶ 111 at 4 n.3. Here, we view the contracting officer's explanation as simply filling in the rationale for the agency's contemporaneous assignment of a weakness to Octo's proposal for failing to adequately address the 24/7/365 requirement.



The agency responds that its evaluation was reasonable and consistent with the definitions of strengths and significant strengths provided in the solicitation.<sup>13</sup> In this example, for FASA, the SSEB and SSA found:

Offeror's datacenter management and support approach provides a detailed explanation of access controls datacenter security measures. Processes such as [redacted] and [redacted] increase the security of DCoE's data. This approach increases the probability of successful performance of the contract and has merit in a way that will be advantageous to the Government during contract performance.

SSEB Evaluation at 28; ADM at 37.

For Octo, the SSEB and SSA found:

(S) [significant] The Offeror provides an extensive and well-organized approach to transitioning and executing Database Management and Support. The Offeror proposes detailed [redacted]. The use of [redacted] demonstrates the Offeror's understanding of key requirements to this PWS [and] provides appreciable merit in a way that is advantageous to the Government during contract performance.

SSEB Evaluation at 20; ADM at 27.

As the agency explains, Octo's proposal "went further in describing 'detailed [redacted].'" Supp. AR at 17 (underlining added); see also ADM at 27.

As noted above, we do not reevaluate proposals but will examine the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation's stated evaluation criteria and applicable procurement statutes and regulations. DynCorp Int'l LLC, supra. A protester's disagreement with an agency's evaluation judgments, without more, does not establish that the agency acted unreasonably. Science Applications Int'l Corp., supra. Furthermore, due to the

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<sup>13</sup> The solicitation provided the following definitions:

Strength: An aspect of an offeror's proposal that has merit or exceeds specified performance or capability requirements in a way that will be advantageous to the Government during contract performance.

Significant Strength: An aspect of an offeror's proposal that has appreciable merit or appreciably exceeds specified performance or capability requirements in a way that will be appreciably advantageous to the Government during contract performance.

TOPR at 27.

inherently subjective nature of the technical judgments of evaluators, it is best left to their discretion whether a proposal deserves a given technical rating versus the next higher or lower rating. See CAS, Inc., B-260934.2, B-260934.3, Sept. 12, 1995, 95-2 CPD ¶ 239 at 6. In other words, agency evaluators' judgments about the slight qualitative differences which result in a "strength" instead of a "significant strength" are not subject to rational legal objection unless a clear showing of unreasonableness is made. See Applied Tech. Sys., Inc., B-404267, B-404267.2, Jan. 25, 2011, 2011 CPD ¶ 36 at 9-10.

Here, we find that FASA's protest does not show that the agency was unreasonable in assigning certain strengths to FASA's proposal and significant strengths to Octo's proposal under the technical approach factor. In this example, our review of the record reflects that the agency reviewed and recognized distinctions between the two proposals, documented these findings, and assigned evaluation results that were broadly consistent with the definitions provided in the solicitation. The protester's disagreement with the evaluation is not sufficient to render it unreasonable, and we find no other basis to question the reasonableness of the agency's evaluation here.

#### Price Evaluation of Octo's Proposal

Finally, FASA argues that the agency failed to evaluate Octo's price proposal in accordance with the solicitation. Specifically, FASA argues that the agency failed to evaluate Octo's hourly rates on a labor category basis and challenges the agency's use of an average labor rate to evaluate Octo's labor rates.<sup>14</sup> Supp. Protest at 1-2.

The agency responds that its evaluation of Octo's price proposal was consistent with the solicitation, which advised that price "will be evaluated for fairness and reasonableness" in terms of level of effort, consistency with the technical approach, and fairness and reasonableness of proposed prices. Supp. AR at 13; TOPR at 24. The agency used both an IGCE and an average labor rate to evaluate proposals. ADM at 93-94. The agency further asserts that FAR § 15.404-1(b)(2) authorizes the use of "various price analysis techniques and procedures to ensure a fair and reasonable price," including the use of "rough yardsticks" to "highlight significant inconsistencies" in proposals per FAR § 15.404-1(b)(2)(iii). Supp. AR at 14.

The agency applied this methodology to Octo's price proposal and found that Octo's proposed average labor rate was [redacted] percent higher than the average labor rate (which was within its established acceptable range of [redacted] percent) and [redacted] percent lower than the IGCE. ADM at 97. In addition, the agency "found no

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<sup>14</sup> In its initial protest, FASA alleged that the solicitation required the agency to perform a cost realism analysis and that the agency failed to do so on Octo's proposal. FASA later expressly withdrew this protest allegation. Protester's Supp. Comments at 10. Accordingly, even where FASA nonetheless continues to raise concerns about low or "unrealistic" pricing, we consider such arguments withdrawn.

inconsistent or over/under inflated rates” and concluded that Octo’s “proposed price is consistent with the technical approach [and] pricing is consistent with and reflects the proposed staffing requirements.” Id. at 97-98.

In awarding a fixed-price contract, an agency is required to determine that the price offered is fair and reasonable. FAR § 15.402(a). An agency’s concern in making a price reasonableness determination focuses primarily on whether the offered prices are higher than warranted, as opposed to lower. A1 Procurement, JVG, B-404618, Mar. 14, 2011, 2011 CPD ¶ 53 at 3. In this regard, the manner and depth of an agency’s price analysis is a matter within the sound exercise of the agency’s discretion, and we will not disturb such an analysis unless it lacks a reasonable basis. Gentex Corp.--Western Operations, B-291793 et al., Mar. 25, 2003, 2003 CPD ¶ 66 at 27-28.

Here, we find no basis to sustain FASA’s challenges to the agency’s evaluation of Octo’s price proposal. As a preliminary matter, we find nothing in the record to support FASA’s arguments that the solicitation required the agency to evaluate Octo’s hourly rates on a labor category basis or that it prohibited the use of an average labor rate to evaluate Octo’s labor rates. Further, 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 other offerors’ prices, to prices found reasonable on previous purchases, or to an independent government estimate. See FAR § 15.404-1(b)(2). Again, we will not substitute our judgment for that of the agency. Where, as here, the agency established and applied a methodology consistent with the solicitation and applicable statutes and regulations; compared Octo’s pricing to the “level of effort” and “technical approach” as advised in the solicitation; evaluated such pricing to be “fair and reasonable”; and documented its findings accordingly, we have no basis to sustain the protest.

The protest is denied.

Thomas H. Armstrong  
General Counsel