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# Decision

**Matter of:** Earth Resources Technology Inc.

**File:** B-416415; B-416415.2

**Date:** August 31, 2018

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## DIGEST

1. Protest challenging the evaluation of the vendors' proposals is denied where the agency's evaluation did not rely on unstated evaluation criteria and was otherwise reasonable.
  2. Agency was not required to consider information allegedly known to agency personnel regarding the protester's proposed key personnel where that information was not included in the protester's proposal.
  3. Protest that the agency failed to reasonably evaluate whether the awardee would be able to perform the task order at the price proposed is dismissed where the solicitation did not provide for the evaluation of the realism of vendors' prices.
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## DECISION

Earth Resources Technology Inc. (ERT), of Laurel, Maryland, a small business, protests the issuance of a task order to Global Science & Technology, Inc. (GST), of Greenbelt, Maryland, also a small business, by the Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), under request for proposals (RFP) No. NEED0000-18-00391. The protester argues that the agency unreasonably evaluated the vendors' technical proposals and failed to assess whether the awardee could perform the task order requirements at its proposed price.

We deny in part and dismiss in part the protest.

## BACKGROUND

NOAA issued the RFP on February 15, 2018, seeking proposals to provide services in support of the agency's Center for Satellite Applications and Research (STAR), which acquires and manages the nation's environmental satellites. Agency Report (AR), Tab 8, RFP amend. 2, at 2. The RFP anticipated the issuance of a time-and-materials task order with fixed labor rates, with a base period of 1 year and four 1-year options. Id. at 16, 31. The competition was limited to small business vendors who hold one of the agency's ProTech Satellite Domain multiple-award indefinite-delivery, indefinite-quantity (IDIQ) contracts. Id. at Cover Letter. The vendor will be required to "ensure that the satellite data produced by each of the NOAA operational sensors are of high quality, and meet product requirements and user needs." Id. at 2.

The RFP advised that proposals would be evaluated on the basis of price and the following two evaluation factors: (1) technical capability and (2) staffing and management plan. Id. at 30-31. For purposes of award, the technical capability factor was "more important" than the staffing and management plan factor, and the non-price factors, when combined, were "approximately" equal to price. Id. at 31.

NOAA received proposals from four vendors, including ERT and GST, by the closing date of February 25. AR, Tab 17, Source Selection Decision (SSD), at 1. The agency assigned ERT's and GST's proposals the following ratings:

	ERT	GST
OVERALL RATING	GOOD	OUTSTANDING
Technical Capability	Good	Outstanding
Staffing and Management Plan	Satisfactory	Good
PRICE	\$37,797,820	\$30,282,665

Id. at 7.

The contracting officer, who was also the source selection authority, found that GST's proposal had the highest overall ratings under the non-price factors and offered the lowest price. Id. The contracting officer stated that GST's proposal "offers excellent comprehensive technical coverage of the [statement of work (SOW)], several strengths, no significant weaknesses, and only 2 weaknesses," and that the proposal's "strengths clearly outweigh the identified weaknesses, and there is a higher likelihood of successful contract performance than the three higher price/ lower-technically rated offers." Id. Based on these considerations, the contracting officer selected GST's proposal for issuance of the task order. Id. The agency provided a debriefing to ERT, which concluded on May 22, and this protest followed.<sup>1</sup>

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<sup>1</sup> The awarded value of the task order at issue exceeds \$10 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of orders  
(continued...)

## DISCUSSION

ERT raises the following five primary arguments: (1) the agency unreasonably assigned a weakness to the protester's proposal concerning its proposed key personnel based on undisclosed evaluation criteria; (2) the agency unreasonably assigned a weakness to the protester's proposal based on a failure to adequately correlate the qualifications of personnel to the SOW; (3) the agency unreasonably assigned the protester's proposal a weakness concerning its proposed partnerships with cooperative institutes; (4) the agency failed to evaluate whether the awardee's proposed price was adequate to perform the work; and (5) the agency failed to evaluate vendors' proposed labor mixes. For the reasons discussed below, we find no basis to sustain the protest based on these arguments.<sup>2</sup>

In reviewing protests challenging an agency's evaluation of proposals in a task order competition, our Office does not reevaluate proposals, but examines the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. Trandes Corp., B-411742 et al., Oct. 13, 2015, 2015 CPD ¶ 317 at 6. A vendor's disagreement with the agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. MicroTechnologies, LLC, B-413091.4, Feb. 3, 2017, 2017 CPD ¶ 48

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(...continued)

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).

<sup>2</sup> ERT raises other collateral issues. Although we do not address every issue, we have reviewed them all and find that none provides a basis to sustain the protest. In addition, ERT raised several arguments in its initial protest which it did not address in its comments on the agency report. For example, the protester argued that the agency unreasonably assigned a weakness to its proposal regarding the staffing and management plan with regard to expertise concerning polar-orbiting and geostationary operational environmental satellite (GOES-R) satellites. Protest at 12. The agency provided a detailed response in its report on the protest concerning the RFP's requirements and the agency's evaluation of ERT's proposed subject matter experts. Contracting Officer's Statement (COS) at 24; Memorandum of Law at 17-18. The protester's comments did not directly address the agency's response to the protest, and instead simply asserted as follows: "Finally, the Agency Report confirms that the Solicitation was not specific regarding either GOES-R or polar-orbiting satellites." Protester's Comments, July 5, 2018, at 2-3. Because the protester's comments only repeat the initial protest assertion and do not address the agency's response, we dismiss these arguments as abandoned. Bid Protest Regulations, 4 C.F.R. § 21.3(i)(3) ("GAO will dismiss any protest allegation or argument where the agency's report responds to the allegation or argument, but the protester's comments fail to address that response.").

at 7. 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.

#### Key Personnel Leadership and Communications Skills

ERT argues that NOAA unreasonably assigned a weakness to its proposal under both evaluation factors because it did not demonstrate that the proposed key personnel have the required leadership and communications skills to perform the SOW. The protester argues that the SOW did not require vendors to demonstrate this experience, and that, in any event, the technical capability factor did not anticipate evaluation of the skills of key personnel. In the alternative, the protester argues that the agency failed to consider information known to government personnel about the qualifications of ERT's proposed personnel.

Agencies are required to evaluate proposals or quotations based solely on the factors identified in the solicitation. Vencore Servs. & Solutions, Inc., B-412949, B-412949.2, July 18, 2016, 2016 CPD ¶ 346 at 10. Nonetheless, agencies are not required to identify every aspect of each evaluation factor which might be taken into account, provided that they are reasonably related to or encompassed by the RFP's evaluation criteria. INDUS Tech., Inc., B-411919 et al., Nov. 20, 2015, 2015 CPD ¶ 359 at 9.

Here, the technical capability evaluation factor stated that the agency would evaluate vendors' proposals as follows:

The Government will evaluate the offeror's (inclusive of any proposed team member or subcontractor) understanding of the SOW requirements and likelihood of successful and high quality contract performance. The Government will assess the offeror's demonstrated capabilities for all aspects of the SOW. The Government will also evaluate the offeror's relevant corporate experience performing contracts or task orders with similar size, scope, and complexity to the SOW and work assignments.

RFP at 30. The staffing and management plan evaluation factor stated that the agency would evaluate "the overall quality and comprehensiveness of the Offeror's Management Approach . . . [and] the labor mix, key personnel roles and responsibilities, and qualifications of key personnel or other proposed candidates as they relate to the requirements of the SOW." Id. at 30-31.

Sections 2.1 and 2.3 of the SOW require the successful vendor to meet the following requirement regarding technical leadership:

Provide technical leadership for the respective Sensor Data Record (SDR) calibration/validation [(Cal/Val)] team; coordinate and manage all Cal/Val tasks for the respective instrument, coordinate with external organizations

and monitor the progress made by investigators funded by the STAR; and organize regular meetings/teleconferences (weekly, biweekly, monthly), as well as sessions at annual meetings.

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Provide technical leadership for the [calibration working group]; coordinate all Cal/Val . . . tasks, coordinate with external organizations and monitor the progress made by investigators funded by the STAR; and organize regular meetings/teleconferences (weekly, biweekly, monthly).

RFP at 3, 5.

For the technical capability evaluation factor, the agency assigned a weakness because the protester's proposed key resumes "do not demonstrate the ability to perform SOW requirements of leadership as described in Section 2.1 of the RFP." AR, Tab 16, Technical Evaluation Team (TET) Consensus Report, at 9. The agency also found that the resumes "indicate no communication skills with respect to oral/written briefings (including but not limited to technical presentations at annual meetings)." *Id.* For the staffing and management plan evaluation factor, the agency assigned a weakness in part because the protester did not adequately explain how the resumes for proposed key personnel demonstrated technical leadership. *Id.* at 10.

ERT argues that leadership and communications skills were undisclosed evaluation criteria not identified in the RFP. As set forth above, however, both the technical capability factor and the staffing and management plan factors clearly required vendors to demonstrate the ability to perform the SOW requirements. In particular, sections 2.1 and 2.3 of the SOW each expressly require the vendor to provide "technical leadership." With regard to communications skills, the agency argues that although they are not specifically identified in the SOW, they are necessary to perform the requirements regarding coordination with external organizations and the organization of meetings. COS at 16-17. We think the agency reasonably concluded that the SOW required vendors to demonstrate the ability to provide leadership and communications skills, and therefore reasonably assessed weaknesses to the protester's proposal.<sup>3</sup>

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<sup>3</sup> As ERT notes, the technical capability evaluation factor did not expressly state that the agency would evaluate the skills or qualifications of vendors' proposed key personnel. *See* RFP at 30. Even if we were to agree with the protester that the agency should have confined its evaluation of key personnel to the management and staffing plan factor, we find no basis to conclude that the protester could have been prejudiced by the agency's evaluation. *See DRS ICAS, LLC, supra*. In this regard, even if the weakness assigned to the protester's proposal under the technical capability factor is viewed as a weakness independent of the weakness assigned under the staffing and management plan, the removal of this weakness would not improve the protester's prospect for award because the awardee's proposal would remain more highly rated overall and offered a lower price. *See* AR, Tab 17, SSD, at 7.

Alternatively, ERT argues that, even if the RFP provided for the evaluation of leadership and communications skills, NOAA unreasonably failed to consider information it knew regarding the skills of the protester's proposed personnel. For example, the protester argues that certain ERT personnel made presentations at conferences and workshops that were attended by NOAA personnel, and that the agency was therefore on notice of these individuals' leadership and communications skills. Protester's Comments, July 5, 2018, at 3-5; Decl. of ERT President, July 4, 2018, at 1-2. In support of its argument, the protester cites decisions by our Office in which we have explained that certain types of information is "too close at hand" for agencies to ignore in their evaluation of an offeror's or vendor's proposals or quotations. See Protester's Comments, July 5, 2018, at 3-5.

We have recognized that in certain limited circumstances, an agency has an obligation (as opposed to the discretion) to consider "outside information" bearing on a vendor's or offeror's past performance when it is "too close at hand" to require the vendors or offerors to shoulder the inequities that spring from an agency's failure to obtain and consider the information. See, e.g., International Bus. Sys., Inc., B-275554, Mar. 3, 1997, 97-1 CPD ¶ 114 at 5; SCIENTECH, Inc., B-277805.2, Jan. 20, 1998, 98-1 CPD ¶ 33 at 5; Triad Int'l Maint. Corp., B-408374, Sept. 5, 2013, 2013 CPD ¶ 208 at 5. In International Business Systems, for example, we concluded that the agency could not reasonably ignore information regarding the protester's performance of a recent contract involving the same agency, the same services, and the same contracting officer--particularly where the protester had requested in its proposal that the agency consider this performance, and where the agency's failure was caused by the failure of agency personnel to complete a written assessment. International Bus. Sys., supra, at 5.

We have, however, declined to apply the "too close at hand" principle in situations like this one, where the information relates to technical requirements of a solicitation, rather than past performance information. See Enterprise Solutions Realized, Inc.; Unissant, Inc., B-409642, B-409642.2, June 23, 2014, 2014 CPD ¶ 201 at 9 (too close at hand principle does not apply to key personnel qualifications). In this regard, a vendor's or offeror's technical evaluation is dependent on the information furnished, rather than the agency's failure to consider its own information regarding the assessment. Beretta USA Corp., B-406376.2, B-406376.3, July 12, 2013, 2013 CPD ¶ 186 at 9.

Here, the information that the protester contends should have been considered by the agency does not relate to the past performance of the protester, but rather the qualifications of its proposed key personnel. Because this information was to have been addressed in the vendor's proposals, we conclude that the "too close at hand" principle does not apply here. We therefore find no basis to sustain the protest.

## Other Key Personnel Qualifications

Next, ERT argues that the agency unreasonably found that the protester failed to explain how the qualifications of its key personnel met the SOW requirements. The protester contends that the resumes provided in its proposal adequately explained why these individuals met the requirements.

As set forth above, the RFP required vendors to address “[k]ey personnel and proposed roles as they relate to the SOW, with résumés and letters of commitment.” RFP at 29. The staffing and management plan evaluation factor stated that the agency would evaluate the “qualifications of key personnel or other proposed candidates as they relate to the requirements of the SOW.” Id. at 31.

The agency assigned a weakness to ERT’s proposal based on the following concern relating to the protester’s failure to explain how proposed key personnel would meet the SOW requirements:

Although the offeror provided an extended list of employees, the technical qualifications of Subject Matter Experts or SMEs (RFP Section 3.3) are not clearly identified or introduced in the proposal. The Key Personnel resumes are attached to the proposal, but there is no discussion in either the Technical or the Staff and Management plan about why these individuals are the most qualified to lead specific sensor related tasks, which is a key requirement as stated in Section 3.3 of the RFP. There is no mapping of Key Personnel qualifications to SOW SME requirements. Without a clear correlation of SME capabilities and sensor expertise against different technical SOW requirements in the proposal, it is not possible to determine if all the Key Personnel proposed by the offeror are qualified to successfully fulfill the SOW requirements.

AR, Tab 16, TET Consensus Report, at 9-10.

ERT argues that appendix A to its proposal “clearly identified and mapped [its] Key Personnel against the SOW requirements.” Protest at 10. Appendix A of the proposal consisted of eight key personnel resumes. AR, Tab 12, ERT Technical Proposal, at A.i-A.15. Although the resumes listed the qualifications of the key personnel, there was no discussion of how these qualifications related to the specific SOW tasks. As the agency’s evaluation noted, these resumes did not explain which of the key personnel were proposed to satisfy the specific SOW requirements. AR, Tab 16, TET Consensus Report, at 9-10. Although the protester argues that the resumes, on the whole, should have allowed the agency to conclude that the proposed personnel met the SOW requirements, the RFP clearly required vendors to address key personnel with regard to how they “relate to the SOW.” RFP at 29. The protester’s disagreement with the agency’s judgment here does not demonstrate that the evaluation was unreasonable. See MicroTechnologies, LLC, supra. We therefore find no basis to sustain the protest.

## Cooperative Institutes

Next, ERT argues that NOAA unreasonably assigned its proposal a weakness based on the protester's proposed approach of partnering with cooperative institutes. The protester contends that the RFP did not prohibit vendors from proposing to work with cooperative institutes, and that the RFP in fact required this approach.

The NOAA cooperative institutes are "academic and non-profit research institutions that . . . conduct research that supports NOAA's Mission Goals and Strategic Plan." AR, Tab 2, Decl. of TET Lead ¶ 8. ERT's proposal stated that it would provide "[DELETED]" through its memoranda of understanding with a number of cooperative institutes that currently work with the agency. AR, Tab 12, ERT Technical Proposal, at 10-11. The protester's proposal stated that its relationships with the cooperative institutes would enhance its ability to perform the work by, for example, enabling ERT and the cooperative institutes [DELETED]. Id. at 10.

The agency assigned a weakness to ERT's proposal under the technical capability evaluation factor because the proposed relationships with the cooperative institutes to perform the work introduced potential risks, as follows:

The partnerships that the offeror has established with the NOAA Cooperative Institutes (CI) is not a benefit to the Government for this RFP and in fact, may introduce complex issues as well as risks, for example, intellectual property, and protection of [controlled unclassified information/ export administration regulations/international traffic in arms regulations (CUI/EAR/ITAR)] information as required by this RFP, since access to such information, as well as proprietary information by instrument vendors, will be required under many of the tasks.

The tasks in this RFP focus[] on operational support and routine deliverables by STAR to operational missions which are more suited for contractual services, while CIs are more focused on research and development with different type[s] of deliverables and accomplishments. NOAA has established cooperative agreements with its CIs through a competitive process and provides Financial Assistance research grants to accomplish its mission goals with research oriented work. The Government already has access to the technical capabilities at the CIs. There is no benefit to the Government if the prime contractor gives subcontracts to the CIs for technical reach back, instead, it may introduce risks as well as reduce the performance efficiency, and possibly [introduce] accountability issues.

AR, Tab 16, TET Consensus Report, at 9.

ERT does not specifically dispute the agency's concerns regarding the risks posed by the vendor's relationships with cooperative institutes regarding access to information.



Instead, the protester argues that the weakness was unreasonably assigned because the RFP did not expressly prohibit vendors from proposing to partner with cooperative institutes to perform part of the work. The record shows, however, that the agency did not assign the weakness because the proposed partnering was prohibited. See id. Rather, as set forth above, the agency concluded that the proposed approach gave rise to concerns regarding protection of CUI/EAR/ITAR and proprietary information, and that the protester did not adequately explain why the benefits of the protester's relationships with cooperative institutes outweighed these concerns. See id. We find no basis in the record or the protester's arguments to conclude that the assignment of this weakness was unreasonable.

ERT also contends that the RFP specifically "mandated" that vendors work with cooperative institutes during performance of the task order. Protester's Supp. Comments, July 20, 2018, at 7. In this regard, the protester notes that the solicitation contained the following requirement in the SOW: "[T]he Contractor shall work with the product developers at STAR and its Cooperative Institutes (CI) and forecasters to provide feedback on the training and evaluation of product tailoring and decision aids." RFP at 13, SOW ¶ 2.16. This SOW provision, however, refers to the requirement for the vendor to work with the agency and the cooperative institutes supporting the agency. It does not require, as the protester implies, that vendors partner with other cooperative institutes to perform the work under the task order. As discussed above, the agency expressed concern that the protester's proposed relationships with other cooperative institutes would give rise to problems relating to intellectual property and access to restricted information. AR, Tab 16, TET Consensus Report, at 9. On this record, we find no basis to sustain the protest.

### Price Realism

Next, ERT argues that the agency failed to evaluate whether GST would be capable of performing the task order requirements at the price it proposed. The protester notes that the awardee's proposed price was approximately 25 percent lower than the independent government cost estimate, and therefore contends that the agency unreasonably failed to evaluate whether the awardee's price was too low to achieve the level of performance set forth in its technical proposal. These arguments, in effect, concern whether the agency conducted a price realism evaluation.

A price realism review assesses whether proposed prices are too low, such that there may be a risk of poor performance. See Federal Acquisition Regulation (FAR) § 15.404-1(d); C.L. Price & Assocs., Inc., B-403476.2, Jan. 7, 2011, 2011 CPD ¶ 16 at 3. Where a solicitation contemplates the award of a time-and-materials task order with fixed labor rates, price realism is not ordinarily considered, because a fixed-priced order places the risk and responsibility for costs and resulting profit or loss on the contractor. HP Enter. Servs., LLC, B-413888.2 et al., June 21, 2017, 2017 CPD ¶ 239 at 5; see FAR § 15.402(a).

While an agency may conduct a price realism analysis in awarding a fixed-price contract or task order for the limited purpose of assessing whether an offeror's or vendor's low price reflects a lack of technical understanding of risk, offerors or vendors must be advised that the agency will conduct such an analysis. FAR § 15.404-1(d)(3); Emergint Techs., Inc., B-407006, Oct. 18, 2012, 2012 CPD ¶ 295 at 5-6. Where a proposal does not expressly provide for the evaluation of price realism, we will only conclude that a solicitation contemplates such an evaluation where the solicitation: (1) states that the agency will review prices to determine whether they are so low that they reflect a lack of technical understanding, and (2) states that a proposal can be rejected or assessed technical risk for offering low prices. NJVC, LLC, B-410035, B-410035.2, Oct. 15, 2014, 2014 CPD ¶ 307 at 4; DynCorp Int'l LLC, B-407762.3, June 7, 2013, 2013 CPD ¶ 160 at 9. Absent a solicitation provision providing for a price realism evaluation, agencies are neither required, nor permitted, to conduct a realism evaluation in awarding a fixed-price contract or task order. See Emergint Techs., Inc., *supra*.

Here, the RFP stated that the agency would evaluate whether vendors' proposed prices were fair and reasonable, *i.e.*, not unreasonably high: "The Government will conduct a price analysis in accordance with FAR 15.404-1 to determine that the offeror's proposed pricing is fair and reasonable and consistent with the terms and limits of the base IDIQ." RFP at 31. The RFP however, did not state, expressly or otherwise, that the agency would evaluate whether vendors' proposed prices were realistic, *i.e.*, too low for the work proposed. See id. On this record, we conclude that the agency was not required to evaluate whether GST's proposed price was too low to perform the task order, and therefore dismiss this argument because it fails to state a valid basis of protest. 4 C.F.R. § 21.5(f).

#### Labor Mix

Finally, ERT argues that NOAA failed to evaluate vendors' proposed labor mixes, as required under the staffing plan and management factor.<sup>4</sup> The protester contends that the agency either failed to conduct an evaluation, or conducted an unreasonably cursory review.

NOAA states that the TET members were provided with the price proposals of all vendors and were asked to evaluate whether the proposed labor mixes were acceptable. Supp. COS at 1. The agency contends that the notes prepared by the TET evaluators reflect that vendors' labor mixes were evaluated. See Supp. AR, Tabs 3, 5, 7, Evaluator Notes. For example, one evaluator noted that the awardee's proposal reflected "a good mix [of] labor of each task[] defined in the section 3.4 and key personnel in appendix-A," and the protester's proposal reflected "a good mix [of] labor of each task[] defined in the [] Table 3-4 and a good strategy for risks and mitigation as

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<sup>4</sup> ERT also argues that the evaluators failed to adequately consider whether GST's labor mix showed that the awardee could perform the work at its proposed price. As discussed above, however, the RFP did not provide for a price realism evaluation.

shown in Table 3-3.” Supp. AR, Tab 3, Evaluator Notes, at 4-5. None of the evaluators found that the vendors’ proposed labor mixes were unacceptable. See Supp. AR, Tabs 3, 5, 7, Evaluator Notes. Although the TET consensus report does not specifically address vendors’ proposed labor mixes, the award decision stated that “[n]o offeror’s proposed labor mix was determined to be unacceptable from a technical standpoint, based on the proposed staffing and management plan, and the rates have been determined to be fair and reasonable, as stated above.” AR, Tab 17, SSD, at 6.

ERT argues that the agency performed only a “cursory” evaluation of the vendors’ proposed labor mixes, and that the evaluation fell short of what the protester contends should have been a more comprehensive evaluation. Protester’s Supp. Comments, July 20, 2018, at 2. As cited above, however, the RFP simply stated that the agency would “evaluate the labor mix” for each proposal; the solicitation did not specify any particular method for assessing vendors’ labor mixes. RFP at 31. Moreover, although the protester was provided the awardee’s cost and technical proposals, the protester does not allege that any part of these proposals reflected a defective labor mix. Instead, the protester speculates that a proper evaluation might show that the awardee’s proposed labor mix was unacceptable. See Protester’s Comments, July 5, 2018, at 6; Protester’s Supp. Comments, July 20, 2018, at 2-4. Based on the record provided by the agency concerning the evaluators’ review and the agency’s overall conclusions, and in the absence of any specific argument by the protester that GST’s labor mix was flawed, we find no basis to conclude that the agency failed to satisfy the RFP’s requirements for evaluating labor mixes or that the evaluation was unreasonable. We therefore find no basis to sustain the protest.

The protest is denied in part and dismissed in part.

Thomas H. Armstrong  
General Counsel