



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.  
Washington, DC 20548

Comptroller General  
of the United States

# Decision

## DOCUMENT FOR PUBLIC RELEASE

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

**Matter of:** Cognosante, LLC

**File:** B-417111; B-417111.3; B-417111.4

**Date:** February 21, 2019

C. Joël Van Over, Esq., Alexander Ginsberg, Esq., Meghan Doherty, Esq., and Kevin Massoudi, Esq., Pillsbury Winthrop Shaw Pittman LLP, for the protester.  
Marcia G. Madsen, Esq., David F. Dowd, Esq., Roger V. Abbott, Esq., and Luke Levasseur, Esq., Mayer Brown LLP, for Booz Allen Hamilton, Inc., the intervenor.  
Frank V. DiNicola, Esq., Tara T. Nash, Esq., and Desiree A. DiCoccia, Esq., Department of Veterans Affairs, for the agency.  
Stephanie B. Magnell, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

1. Protest challenging the agency's price reasonableness evaluation is sustained, where the record does not demonstrate that the agency evaluated final prices for reasonableness.
2. Protest challenging the agency's award of a strength is sustained, where the strength did not reasonably relate to the elements described in the solicitation.
3. Protest alleging that the agency conducted an unequal evaluation is sustained, where the agency evaluated proposals using differing levels of scrutiny.
4. Protest alleging that the agency engaged in disparate treatment by failing to award strengths to offerors equally for similar aspects of their proposals is denied, where there were substantive differences between the proposals that did not warrant assigning the same strength.
5. Protest alleging that the agency failed to evaluate the risk posed by the awardee's lower labor hours under the fixed-price portion of the solicitation is denied, where the solicitation did not require such an evaluation.

## **DECISION**

Cognosante MVH, LLC, of Falls Church, Virginia, protests the issuance of task order No. TAC-18-50649 to Booz Allen Hamilton (BAH), of Red Bank, New Jersey, by the Department of Veterans Affairs (VA), for information technology (IT) operations and services and remediation support services. The protester alleges that the agency failed to evaluate final prices for reasonableness, improperly awarded BAH a strength under the technical factor, evaluated offerors' technical proposals<sup>1</sup> disparately, and failed to evaluate the fixed-price portion of BAH's proposal for technical risk.

We sustain the protest.

## **BACKGROUND**

The VA issued the solicitation as a request for task execution plan (RTEP) on September 6, 2018. The RTEP was structured as a hybrid fixed-price and time-and-materials<sup>2</sup> task order and competed under fair opportunity provisions of the Federal Acquisition Regulation (FAR) § 16.505(b)(1) among the 28 holders of the VA's multiple award indefinite-delivery, indefinite-quantity (IDIQ) Transformation Twenty-One Total Technology Next Generation (T4NG) contract. Agency Report (AR), Tab 13, Source Selection Decision (SSD) at 1. The period of performance consisted of a 12-month base period, four 12-month option periods, and an optional 60-day transition support period. RTEP at 9.<sup>3</sup>

The RTEP provided for issuance of a task order to the offeror whose proposal was determined to be the most beneficial to the agency, considering the three evaluation factors of technical, past performance, and price/cost. Id. at Intr. 2. The technical factor was significantly more important than the past performance factor, which was slightly more important than the price/cost factor. Id. The technical factor was evaluated with adjectival ratings, and the past performance factor was evaluated using a point-based scale, with a maximum score of 20 points. Id. at Intr. 3. Proposals with a rating below acceptable for the technical factor were ineligible for award. Id. at Intr. 2.

---

<sup>1</sup> The solicitation requests that contractors submit plans; for consistency with the briefing, these plans are referred to as proposals in this decision.

<sup>2</sup> The agency specified the labor categories and number of hours--13,223,040--for the time-and-materials portion of the task order. See, e.g., AR, Tab 11, BAH Price Evaluation at 4.

<sup>3</sup> Citations to the RTEP are to the amended version of the solicitation, which starts on consecutive page 177 of AR, Tab 6. The RTEP begins with seven unpaginated introductory pages containing the evaluation criteria and several FAR clauses; the citations to these pages are prefaced by "Intr."

The VA received seven timely proposals by the deadline of September 21. SSD at 1. The agency established a competitive range of six proposals and conducted discussions. Contracting Officer's Statement (COS) at 2. As part of these discussions, the VA advised BAH: "Your price appears to be high in comparison to other Offeror[s'] proposed prices. Address, and revise your price volume if necessary." AR, Tab 9, BAH Price Evaluation Notice (EN) at 1. In response, BAH reduced its price.<sup>4</sup> AR, Tab 10, BAH Resp. to Price EN. Final proposed prices were as follows:

| Offeror    | Fixed-Price | Time & Materials | Total Evaluated Price |
|------------|-------------|------------------|-----------------------|
| E          | \$[DELETED] | \$[DELETED]      | \$741,369,263.03      |
| C          | \$[DELETED] | \$[DELETED]      | \$776,307,597.24      |
| Cognosante | \$[DELETED] | \$[DELETED]      | \$793,914,921.11      |
| D          | \$[DELETED] | \$[DELETED]      | \$815,633,712.24      |
| A          | \$[DELETED] | \$[DELETED]      | \$859,736,611.31      |
| BAH        | \$[DELETED] | \$[DELETED]      | \$999,851,638.80      |

See AR, Tab 18, Source Selection Authority (SSA) Briefing.

In evaluating BAH's proposal under the technical factor, the agency identified one significant strength and four strengths.<sup>5</sup> AR, Tab 18, SSA Briefing at 19-21. The significant strength was awarded for exceeding the RTEP's requirements for information security configuration management support in two areas: automation of [DELETED], and creation of [DELETED]. AR, Tab 20, BAH Technical Report at 2. One strength each was also awarded to BAH's proposal for offering to: (1) provide a [DELETED] where BAH failed to timely propose a qualified candidate; (2) monitor whether [DELETED]; (3) monitor [DELETED]; and (4) connect [DELETED]. *Id.* at 2-4. The agency did not assess BAH's proposal with any weaknesses or deficiencies. AR, Tab 18, SSA Briefing at 22. In evaluating Cognosante's proposal under the technical

---

<sup>4</sup> The VA asserts that BAH lowered its labor rates in response to the EN, resulting in a total price reduction of \$[DELETED]. Supp. MOL at 6. However, the agency did not include in the agency report BAH's initial labor rates, or BAH's or any other offeror's initial prices, and thus our Office is unable to confirm the absolute or relative magnitude of BAH's price reduction.

<sup>5</sup> The agency defined a strength as:

Any aspect of a [proposal] when judged against a stated evaluation criterion, which enhances the merit of the [proposal] or increases the probability of successful performance of the contract. A significant strength appreciably enhances the merit of a [proposal] or appreciably increases the probability of successful contract performance.

AR, Tab 5, Task Order Evaluation Plan at 5.

factor, the agency identified no strengths, weaknesses, or deficiencies. Id. at 23. The agency's final evaluations of the protester and the awardee were as follows:

| Factor                | BAH                 | Cognosante          |
|-----------------------|---------------------|---------------------|
| Technical             | Outstanding         | Acceptable          |
| Past Performance      | 12 out of 20 points | 11 out of 20 points |
| Total Evaluated Price | \$999,851,638.80    | \$793,914,921.11    |

AR, Tab 13, SSD at 3. The SSA determined that BAH offered the best value to the VA and made award on October 26. Id. at 13. The protester requested a debriefing, which was held on November 6. AR, Tab 16, Protester Debrief Slides. This protest was filed on November 13.<sup>6</sup>

## DISCUSSION

Cognosante raises several challenges to the agency's price and technical evaluations. As discussed below, we sustain the challenge to the agency's price reasonableness evaluation; one of the protester's challenges to the agency's award of a strength to BAH; and the protest ground alleging that the agency used different standards when assigning strengths to offerors' technical proposals. The remaining challenges to the agency's technical evaluation, including those alleging disparate treatment, are denied. Importantly, as to the agency's technical evaluation, we find that the agency applied a different standard when evaluating BAH's and Cognosante's proposals. However, given the substantive differences between BAH's and Cognosante's proposals, we deny the protest grounds alleging that the agency failed to assign equal strengths for similar proposal features, because we do not find the proposals to be similar in the manner alleged by Cognosante. As to the remaining denied allegations, while a representative sample are discussed in more detail below, all have been considered and none provides a basis to sustain the protest.

### Price Reasonableness

Cognosante first argues that the VA failed to satisfy the FAR requirement to ensure that BAH's price was fair and reasonable because it failed to compare offerors' prices with one another, despite relying on this price reasonableness evaluation method for its conclusions.<sup>7</sup> Protester Comments & Supp. Protest at 4-5.

---

<sup>6</sup> This protest is within our jurisdiction to hear protests of task orders placed under civilian agency IDIQ contracts valued in excess of \$10 million. 41 U.S.C. § 4106(f)(2).

<sup>7</sup> Although procurements conducted under FAR section 16.505 are not subject to the same requirements as those conducted under FAR part 15, FAR section 16.505(b)(3) directs the contracting officer to establish prices for task orders consistent with the policies and methods contained in FAR subpart 15.4. FAR § 16.505(b)(3); CGI Fed. Inc., B-403570 et al., Nov. 5, 2010, 2011 CPD ¶ 32 at 5 n.1.

It is a fundamental principle of federal procurement law that procuring agencies must condition the award of a contract upon a finding that the contract contains “fair and reasonable prices.” FAR §§ 15.402(a), 15.404-1(a); see Crawford RealStreet Joint Venture, B-415193.2, B-415193.3, Apr. 2, 2018, 2018 CPD ¶ 121 at 9. The purpose of a price reasonableness analysis is to prevent the government from paying too high a price for a contract. Crawford RealStreet Joint Venture, supra.

The FAR defines price analysis as “the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit.” FAR § 15.404-1(b)(1). The manner and depth of an agency’s price analysis is a matter committed to the discretion of the agency, which we will not disturb provided that it is reasonable and consistent with the solicitation’s evaluation criteria and applicable procurement statutes and regulations. TransAtlantic Lines, LLC, B-411846.3, B-411846.4, May 18, 2016, 2016 CPD ¶ 148 at 7; Federal Acquisition Servs. Alliant JV, LLC, B-415406.2, B-415406.3, Apr. 11, 2018, 2018 CPD ¶ 139 at 11.

The RTEP here specified no method for the agency’s price reasonableness evaluation. The FAR includes a non-exhaustive list of permitted price analyses that ensure that the agency pays a fair and reasonable price. FAR § 15.404-1(b). The agency states that it elected to use the technique provided in FAR § 15.404-1(b)(2)(i), which entails a “[c]omparison of proposed prices received in response to the solicitation.” AR, Tab 14, Price Determination at 2. The FAR adds that “[n]ormally, adequate price competition establishes a fair and reasonable price.” FAR § 15.404-1(b)(2)(i).

The VA first contends, based solely on the EN it provided to BAH regarding BAH’s high initial price, that it performed a comparison of offerors’ interim prices. Supp. COS at 1. The agency argues that this comparison of interim prices satisfied the requirement of FAR § 15.404-1(b)(2)(i) for a “comparison of proposed prices.” Id. However, even if the record showed further evidence of a comparison of initial prices, this would not constitute a comparison of offerors’ final prices, as contemplated by FAR § 15.404-1(b)(2)(i). The agency next argues that it compared BAH’s underlying proposed RTEP rates to BAH’s basic rates under the T4NG IDIQ contract and that this was an adequate comparison for the purposes of FAR § 15.404-1(b)(2)(i). Supp. MOL at 6. However, the agency’s evaluation simply verified that the offeror’s proposed pricing contained no “mathematical errors.” AR, Tab 11, BAH Price Evaluation at 1-4. The verification performed here is not referenced in the fair and reasonable price determination and does not itself contain a conclusion regarding whether BAH’s price is fair and reasonable.

In contrast, the agency’s support for its conclusion that BAH submitted a fair and reasonable final price consists in its entirety of the following:

Price analysis was conducted [in accordance with] FAR Part 15.404-1(b)(2)(i), comparing proposed prices received in response to the solicitation. Normally, adequate price competition establishes a fair and reasonable price. Although [proposals] were received from seven

Offerors, only six were determined to be eligible for award after the technical evaluation. However, since more than one [proposal] was received from a responsible Offeror, [BAH]'s total evaluated price of \$999,851,638.80 was received under adequate price competition in accordance with FAR Part 15.403-1(c)(1)(i); therefore, price reasonableness has been established. Based on the above information, it is determined that [BAH]'s total [task order] value of \$999,851,638.80 is considered fair and reasonable.

AR, Tab 14, Price Determination at 2 (formatting omitted).

As our Office has previously addressed, the presence of competition--alone--does not render every price received reasonable *per se*. Technatomy Corp., B-414672.5, Oct. 10, 2018, 2018 CPD ¶ 353 at 14. As the plain language of FAR § 15.404-1(b)(2)(i) indicates, a price reasonableness determination relying upon this technique requires a “[c]omparison of proposed prices received in response to the solicitation.” FAR § 15.404-1(b)(2)(i). It is the favorable comparison of an awardee’s price to its competitors’ prices that provides the necessary assurance that a proposed price is fair and reasonable. Technatomy, supra, at 15.

The record here does not demonstrate that the VA performed any assessment or comparison of final proposal prices, and shows instead that it relied upon adequate price competition to determine that BAH’s price was reasonable. Although the determination provides that it “compar[ed] proposed prices received in response to the solicitation,” the agency’s limited analysis shows that the agency’s price reasonableness determination was based solely on the presence of multiple offers. Furthermore, the agency confirms that the contracting officer “determined that the awardee’s price was fair and reasonable based on adequate competition.” Supp. MOL at 5.

Where, as here, the agency relied on FAR § 15.404-1(b)(2)(i) to support its conclusion, but did not compare offerors’ prices to one another or make any findings about why BAH’s highest price should be viewed as reasonable, we find that the agency failed to determine whether offerors’ prices were fair and reasonable. Id. at 14-15; see also Multimax, Inc., et. al., B-298249.6 et al., Oct. 24, 2006, 2006 CPD ¶ 165 at 11 (sustaining challenge to price analysis where “[t]here is no indication that the agency ever reviewed the results of the formula to assure that the prices at the extreme end of the ranges reflected reasonable pricing.”). While BAH’s price may be reasonable and/or fair, the sole fact that it was submitted during a competition does not, alone, make it so.

#### Strength for Offer of [DELETED] for Delayed Staffing

Cognosante next challenges the VA’s award of a strength to BAH for its proposed method of crediting the agency if BAH fails to propose qualified candidates in a timely manner. In this respect, BAH offered the VA “a [DELETED] if [BAH is] unable to identify a candidate in writing that meets the qualifications within [DELETED].” AR, Tab 19, BAH Proposal at 1. The protester contends that the agency’s award of this strength for this aspect of the proposal was unreasonable. Protester Comments & Supp. Protest at 15.

The evaluation of an offeror's proposal is a matter within the agency's discretion. National Gov't Servs., Inc., B-401063.2 et al., Jan. 30, 2012, 2012 CPD ¶ 59 at 5. A protester's disagreement with the agency's judgment in its determination of the relative merit of competing proposals, without more, does not establish that the evaluation was unreasonable. VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4. While we will not substitute our judgment for that of the agency, we will question the agency's conclusion where it is inconsistent with the solicitation criteria and applicable procurement statutes and regulations, undocumented, or not reasonably based. Public Commc'n Servs., Inc., B-400058, B-400058.3, July 18, 2008, 2009 CPD ¶ 154 at 17. Additionally, agencies are required to evaluate proposals based solely on the factors identified in the solicitation. Intercon Assocs., Inc., B-298282, B-298282.2, Aug. 10, 2006, 2006 CPD ¶ 121 at 5.

Here, the RTEP provided that proposals would be evaluated as to "how the Offeror will attract, recruit and retain the workforce necessary to perform the [ . . . ] requirements at the proposed labor rates." RTEP at Intr. 1. As noted above, a strength was an aspect of an offeror's proposal that, "when judged against a stated evaluation criterion, [ . . . ] enhances the merit of the [proposal] or increases the probability of successful performance of the contract." AR, Tab 5, Task Order Evaluation Plan at 5. The VA awarded BAH a strength on the grounds that it "mitigate[d]" the risk of staffing delays.<sup>8</sup> AR, Tab 20, BAH Technical Evaluation at 2.

We do not agree that the agency's determination that a [DELETED] demonstrates how BAH will attract, recruit, and retain its workforce, thus meriting a strength under the terms of the solicitation. The agency's conclusion that this [DELETED] "establishes a definite metric and guarantee for staffing resources" is unreasonable, as this strategy offers no guarantee of staffing resources nor improves personnel recruiting and retention such as, for example, offering a \$[DELETED] salary increase or signing bonus. AR, Tab 20, BAH Technical Evaluation at 3. Indeed, this credit does not affect any factor that would relate to BAH's ability to attract or retain qualified personnel. Accordingly, we sustain this protest ground. AT&T Corp., B-414886 et al., Oct. 5, 2017, 2017 CPD ¶ 330 at 7 n.15 (unreasonable and undocumented conclusion is inadequate support for assigned strength).

### Unequal Evaluation of Proposals

Cognosante asserts that the agency applied different levels of scrutiny to BAH's technical proposal and the protester's technical proposal. Protest at 11-12. In the most prominent of these arguments, the protester contends that the VA misevaluated its technical proposal by failing to assign it a strength under the technical factor for its data overview software. Id. at 11-13. This software "[DELETED]," i.e., where all of the

---

<sup>8</sup> The agency argues that the strength was in fact primarily awarded for BAH's plan to identify qualified candidates for both regular and surge staffing needs. Supp. COS at 6. This claim is inconsistent with the contemporaneous documentation.

performance data [DELETED]. *Id.*; see also AR, Tab 7, Cognosante Proposal at 2-3. The VA argues that Cognosante simply disagrees with the agency's conclusion. Supp. MOL at 7.

The evaluation of an offeror's proposal is a matter within the agency's discretion. National Gov't Servs., Inc., supra, at 5. While we will not substitute our judgment for that of the agency, we will question the agency's conclusion where it is inconsistent with the solicitation criteria and applicable procurement statutes and regulations, undocumented, or not reasonably based. Public Commc'n Servs., Inc., supra, at 17. It is a fundamental principle of federal procurement law that a contracting agency must treat all offerors equally and evaluate their proposals evenhandedly against the solicitation's requirements and evaluation criteria. Will Tech., Inc., Paragon TEC, Inc., B-413139.4 et al., June 11, 2018, 2018 CPD ¶ 209 at 10; Cubic Applications, Inc., B-411305, B-411305.2, July 9, 2015, 2015 CPD ¶ 218 at 7. Further, where an agency treats offerors unequally by, for example, reading some offerors' proposals in an expansive manner and resolving doubt in favor of the offeror, while reading other offerors' proposals narrowly and applying a more exacting standard that requires affirmative representations within the four corners of the proposal, we have found such evaluations to involve disparate treatment. Arctic Slope Mission Servs., LLC, B-410992.5, B-410992.6, Jan. 8, 2016, 2016 CPD ¶ 39 at 7; Lockheed Martin Info. Sys., B-292836 et al., Dec. 18, 2003, 2003 CPD ¶ 230 at 11-12.

The agency assessed BAH's technical proposal one strength for monitoring the possibility of [DELETED] (AR, Tab 20, BAH Technical Report at 2); another for monitoring [DELETED] and providing the VA with recommendations (id. at 3), and a third strength for connecting [DELETED] (id.). These strengths largely relate to general oversight and monitoring functions. While BAH's strengths are not inconsistent with the agency's definition of a strength, they show that merit was assessed for relatively minor enhancements.

Cognosante asserts that, under the level of scrutiny applied by the agency, its proposal warranted a strength for its overview software that [DELETED]. AR, Tab 7, Cognosante Proposal at 2-3. Specifically, this software:

[DELETED]

Id. at 2.

Although the agency contends that Cognosante's proposal "lacks the details necessary for the assessment of a Strength or Significant Strength," the record shows BAH's proposal was awarded strengths on less detail than above. COS at 8. Further, in the context of the strengths assessed to BAH's proposal, the VA's decision not to award Cognosante a strength for its [DELETED] supports the protester's contention that the VA established a different and higher standard of review to evaluate Cognosante's proposal, which amounted to an unequal evaluation. As a result, we sustain this protest ground. Lockheed Martin Info. Sys., supra, at 4 (sustaining protest alleging disparate treatment, where agency "tend[ed] in general to apply a stricter standard in its

evaluation of [the protester's] proposal as compared to the [awardee's] proposal."); see also Will Tech., Inc., Paragon TEC, Inc., supra, at 10.

#### Disparate Treatment for Specific Proposal Aspects

As noted above, while we sustained the protest ground arguing that the agency applied a different level of review to technical proposals, we deny the protest ground asserting that similar aspects of the proposals were assessed differently, on the basis that it is not clear that the proposals are sufficiently similar with respect to other particular strengths challenged by Cognosante. For example, Cognosante argues that the VA engaged in disparate treatment by assigning BAH a significant strength for exceeding the solicitation requirement for information security configuration management in two areas while not similarly crediting Cognosante with strengths for similar aspects of its proposal. Protester Comments & Supp. Protest at 12.

The significant strength assigned to BAH's proposal first recognized BAH's plan to develop [DELETED]. AR, Tab 20, BAH Technical Report at 2. Cognosante asserts that it proposed automations that were similar to those proposed by BAH, such as the [DELETED]. Protester Supp. Comments at 14. The agency contends that Cognosante's proposal lacked sufficient detail about its plans for automation. Supp. MOL at 11.

As the second basis for BAH's significant strength, the VA credited BAH for not only supporting existing "baselines," but also for proposing to develop new ones. AR, Tab 20, BAH Technical Report at 2. Cognosante contends that it too proposed to create new "baselines" and should also receive a strength. Protester Supp. Comments at 10. In response, the agency argues that "Cognosante did not propose creating new baselines . . . but rather met the requirement by proposing to manage and enhance existing baselines." Supp. MOL at 9.

We agree with the agency on both fronts. Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences in the proposals. ASRC Comms., Ltd., B-414319.2 et al., May 9, 2017, 2017 CPD ¶ 167 at 7; Northrop Grumman Sys. Corp., B-406411, B-406411.2, May 25, 2012, 2012 CPD ¶ 164 at 8. As to automation, the record indicates that the protester largely proposed to automate asset management, not vulnerabilities tracking. See, e.g., AR, Tab 7, Cognosante Technical Proposal at 16. Further, the record reflects that Cognosante's proposal demonstrates an intent to work with the existing "baselines," not create new ones. See, e.g., AR, Tab 7, Cognosante Technical Proposal at 16-17 (proposing improvements to "baseline" configuration intake process). Accordingly, Cognosante has not established that the assignment of a significant strength to BAH's proposal for these two aspects of its proposal was not based on differences between the offerors' proposals. Thus, we deny the protest ground that the agency engaged in any disparate treatment here. IPKeys Techs., LLC, B-414890, B-414890.2, Oct. 4, 2017, 2017 CPD ¶ 311 at 9.

## Fixed-Price Analysis

Cognosante argues that the VA failed to meaningfully evaluate whether BAH's proposed staffing level of effort for the fixed-price portion of the contract was technically acceptable. Protester Comments & Supp. Protest at 21.<sup>9</sup> In addition, after equating level of effort in hours with proposed price, the protester asserts that BAH underpriced the fixed-priced portion of its proposal. Id. at 3. The agency disputes the protester's underlying contention that the solicitation required an evaluation of an offeror's level of effort for the fixed-price portion of the RTEP. Id. at 21; Supp. MOL at 17.

The protester has not alleged or demonstrated that BAH's staffing approach was deficient in light of the technical approach BAH offered. Instead, Cognosante's allegation essentially amounts to an argument that the agency failed to perform a price realism evaluation; such an evaluation would consider whether each firm's fixed price offer was realistic in light of its proposed technical approach. Dell Servs. Fed. Gov't, Inc., B-414461.6, Oct., 12, 2018, 2018 CPD ¶ 374 at 10. In the absence of an express price realism provision, we will only conclude that a solicitation contemplates a price realism evaluation where the solicitation expressly states that the agency will review prices to determine whether they are so low that they reflect a lack of technical understanding, and the solicitation states that a quotation can be rejected for offering low prices. OBXtek, Inc., B-415258, Dec. 12, 2017, 2017 CPD ¶ 381 at 8. A review of the solicitation shows no requirement to perform a level of effort analysis or price realism analysis of the fixed-price portion of the proposal. Thus, there was no obligation for the agency to do so. See SaxmanOne, LLC, B-414748, B-414748.3, Aug. 22, 2017, 2017 CPD ¶ 264 at 6. To the extent that the protester contends that such an evaluation should have been included in the RTEP, this argument is an untimely challenge to the terms of the solicitation. 4 C.F.R. § 21.(2)(a)(1).

## Prejudice

In sum, we sustain Cognosante's protests regarding the VA's price reasonableness analysis, the assignment of a strength to BAH, and the differing standards the agency applied in evaluating proposals. Our Office will not sustain a protest, however, unless the record establishes a reasonable possibility that the protester was prejudiced by the agency's actions; that is, but for the agency's actions, the protester would have had a substantial chance of receiving the award. See, e.g., Raytheon Co., B-409651, B-409651.2, July 9, 2014, 2014 CPD ¶ 207 at 17. As a general matter, source selection officials enjoy broad discretion in making tradeoffs between the comparative merits of competing proposals in a best-value evaluation scheme; such tradeoffs are governed

---

<sup>9</sup> Here, for the fixed-price work, Cognosante proposed a level of effort approximately [DELETED] percent--i.e., significantly--higher than BAH, and proportionally greater than Cognosante's approximately [DELETED] percent higher price. Compare AR, Tab 11, BAH Price Evaluation at 3 with AR, Tab 8, Cognosante Price Evaluation at 3. Put another way, Cognosante proposed to perform more work at a lower hourly price.

only by the test of rationality and consistency with the solicitation's evaluation criteria. Coastal Int'l Sec., Inc., B-411756; B-411756.2, Oct. 19, 2015, 2015 CPD ¶ 340 at 14. In a best-value tradeoff procurement, it is the function of the source selection authority to perform a tradeoff between cost and non-cost factors, that is, to determine whether one proposal's superiority under the non-cost factor is worth a higher cost. Id.

Here, we cannot say with certainty whether the SSA would have concluded that BAH's higher-rated, higher-priced proposal represented the best value if the evaluation results were adjusted to account for the flaws discussed above. In such circumstances, we resolve doubts regarding prejudice in favor of a protester, since a reasonable possibility of prejudice is a sufficient basis for sustaining a protest. Target Media Mid-Atl. Inc., B-412468.6, Dec. 6, 2016, 2016 CPD ¶ 358 at 11. Accordingly, we conclude that Cognosante has established the requisite competitive prejudice to prevail in a bid protest.

#### RECOMMENDATION

We recommend that the VA evaluate offerors' proposed prices for reasonableness, reevaluate BAH's and Cognosante's technical proposals using the same standard, and make a new selection decision. We also recommend that the protester be reimbursed the reasonable costs of filing and pursuing its protests, including attorneys' fees. 4 C.F.R. § 21.8(d)(1). The protester should submit its certified claim for costs, detailing the time expended and the costs incurred, directly to the contracting agency within 60 days after receipt of this decision.

The protest is sustained.

Thomas H. Armstrong  
General Counsel