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Decision

Matter of: YWCA of Greater Los Angeles

File: B-414596.7; B-414596.8

Date: March 11, 2019

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DIGEST

1. Protest challenging agency’s evaluation of awardee’s technical proposal and relevant experience is denied where the evaluation was reasonable and consistent with the solicitation’s evaluation criteria.
 2. Protest alleging misleading discussions and challenging the agency’s cost realism evaluation is denied where, notwithstanding apparent errors, the protester failed to demonstrate competitive prejudice.
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DECISION

YWCA of Greater Los Angeles (YWCA), of Los Angeles, California, protests the award of a contract to Management & Training Corporation (MTC), of Centerville, Utah, under request for proposals (RFP) No. DOL-ETA-16-R-00007, by the Department of Labor (DOL), for the operation of the Los Angeles Job Corps Center. The protester challenges almost every aspect of the evaluation and award decision.

We deny the protest.

BACKGROUND

Procedural History

DOL sought a contractor to operate a Job Corps center in Los Angeles, California, and issued the RFP on October 19, 2015. RFP at 1.¹ The RFP anticipated that the contractor would be responsible for providing academic and career training and related support services for residential and non-residential students. By the response date of January 15, 2016, the agency received proposals from two offerors: MTC and YWCA, the 52-year incumbent for this effort. YWCA of Greater Los Angeles, B-414596 et al., July 24, 2017, 2017 CPD ¶ 245 at 2; Memorandum of Law (MOL) at 6.

DOL selected MTC for award, and on April 17, 2017, YWCA filed a protest with our Office alleging that the agency had engaged in unequal discussions. YWCA of Greater Los Angeles, supra, at 1-3. Our Office sustained the protest, finding that DOL improperly permitted MTC to amend its proposal after final submissions by allowing MTC to substitute a person proposed for a key personnel position without similarly entering into discussions with YWCA or allowing YWCA to make revisions to its proposal. Id. at 5. Our decision recommended that DOL reopen discussions with offerors, allow revised proposals, and make a new selection decision.² Id. at 6.

DOL then conducted a second round of discussions, permitted offerors to revise their proposals, received final price revisions, and performed a second evaluation. MOL at 8. On December 29, DOL again made award to MTC, and on January 9, 2018, YWCA filed another protest with our Office, arguing that DOL improperly evaluated MTC's and YWCA's technical and cost proposals, evaluated the two firms' proposals unequally, and conducted an unreasonable best-value determination. YWCA of Greater Los Angeles, B-414596.4, B-414596.5, Mar. 12, 2018 (unpublished decision). We dismissed the protest as academic after DOL notified our Office of its intent to take

¹ The RFP is unpaginated; citations in this decision refer to the ordinal page number.

² Our decision noted as follows:

YWCA also challenged the agency's evaluation of its proposal under the technical approach, staff resources, and past performance factors, as well as the evaluation of MTC's proposal under the relevant experience, past performance and staff resources factors. Since we are sustaining the protest against the agency's conduct of discussions with only one offeror, which will necessarily lead to conducting discussions with the other offeror and a request for revised proposals, followed by a new evaluation and tradeoff decision, we need not address the remainder of YWCA's protest allegations. See SRA Int'l, Inc., B-410973, B-410973.2, April 8, 2015, 2016 CPD ¶ 32 at 5.

YWCA of Greater Los Angeles, B-414596 et al., July 24, 2017, 2017 CPD ¶ 245 at 3 n.5.

corrective action, “reexamine its technical and cost evaluations of both offerors’ proposals to ensure compliance with the RFP and applicable law and regulations, and then [...] issue a new award decision.” Id.

The agency reevaluated proposals and, on October 31, 2018, once again made award to MTC. B-414596.6, Protest at 1-3. YWCA filed a protest on November 13 arguing that DOL should have found MTC’s proposal technically unacceptable. Id. at 16-34. On November 19, YWCA withdrew its protest, acknowledging that its challenge was premature as its protest was filed before the end of the debriefing. We subsequently dismissed the protest. YWCA of Greater Los Angeles, B-414596.6, Nov. 20, 2018 (unpublished decision). Ten days later, on November 30, YWCA timely filed this protest after completion of the debriefing.

Factual Background

The RFP contemplated the award of a single cost-plus-incentive-fee contract with a 1-month transition period, a 2-year base period of performance, and three 1-year option periods. RFP at 24. The solicitation, conducted in accordance with Federal Acquisition Regulation (FAR) part 15, provided for selection of the offeror whose proposal represented the best value to the agency considering the factors of technical approach, relevant experience, staff resources, past performance, and most probable cost. Id. at 98. Between these factors, technical approach was more important than the other non-cost factors, and the non-cost factors were significantly more important than most probable cost. Id. The relevant experience and past performance factors, when combined, were equal in importance to the technical approach factor.³ Id.

Offerors’ business management proposals, consisting of their cost proposal and small business subcontracting plan, were to include “proof that [the offeror is] able to obtain a license to operate in the State in which the [Job Corps] center is located within 30 days of contract award.” Id. at 91. The RFP provided that, prior to award, DOL would confirm that an offeror was “licensed in the state in which the center is located.” Id. at 104-105.

As relevant to this protest, offerors were also to include among their career technical training offerings, a program to prepare Job Corps participants to become licensed practical/vocational nurses. Id. at 14. The career technical training offerings were evaluated as part of the technical factor.

Under the relevant experience factor, DOL was to evaluate the recent experience of offerors and those subcontractors that would “perform major or critical aspects of the requirement,” as it related to the scope, size and complexity of work for this contract. Id. at 102. Under the staff resources factor, which was to be evaluated for elements such as staffing adequacy, staff development, and staff incentives, offerors could receive one

³ Although the weighting scheme appears to be mathematically impossible, no party objected prior to the submission of proposals.

of five adjectival ratings, ranging from unacceptable to outstanding. Agency Report (AR), Tab 22, Source Selection Decision (SSD), at 26. As relevant to this protest, the staff resources factor contained seven subfactors, of decreasing importance, each of which would receive its own adjectival rating. Id. at 32.

In addition, the RFP provided for a cost realism analysis, in which DOL would evaluate, and if necessary adjust, an offeror’s proposed cost to determine “a probable cost of performing the contract using the offeror’s proposed approach.” RFP at 104. The agency would use the offeror’s probable cost “for purposes of the evaluation to determine the best value proposal.” Id. As part of their cost proposals, offerors were to propose a technical performance incentive fee and a cost incentive fee. Although the RFP advised offerors that their proposed technical performance fee could range from 0 percent to 2.4 percent, and their proposed cost incentive fee could range from 3 percent to 4 percent, the solicitation also instructed offerors to “propose the maximum technical performance incentive fee (2.4%) and the maximum cost incentive fee ([4.0]%) for the purpose[s] of cost analysis and contract award amount.” RFP at 92; Amend. 0002 at 2 (raising maximum cost incentive fee to 4.0 percent).⁴

As discussed in more detail below, the agency made certain adjustments to MTC’s and YWCA’s proposed costs. DOL’s final evaluation of the two offerors was as follows:

Factor	MTC	YWCA
Technical Approach	Very Good	Acceptable
Relevant Experience	Very Relevant	Very Relevant
Staff Resources	Very Good	Acceptable
Past Performance	Satisfactory	Satisfactory
Proposed Cost	\$96,818,476	\$100,584,186
Most Probable Cost ⁵	\$96,778,572	\$100,673,810

AR, Tab 22, SSD, at 3, 8. After reviewing the benefits offered by each proposal, the contracting officer selected MTC’s proposal as the one offering the best value to the agency. Id. at 65-66. This protest followed.

DISCUSSION

YWCA raises numerous arguments challenging the agency’s evaluation under almost every evaluation factor. Although only some of the arguments are discussed below, we have reviewed them all and find that none provides a basis to sustain the protest. The

⁴ No party challenged this ambiguity as to whether an offeror had or did not have discretion in choosing its proposed fees prior to proposal submission.

⁵ Transition costs were excluded from the agency’s cost evaluation.

issues addressed here include the protester's challenge to MTC's ability to obtain the licenses necessary to perform the contract with its proposed staff, and allegations of an improper relevant experience evaluation, misleading discussions, and a flawed cost realism analysis. Overall, the agency's evaluation was largely unobjectionable; to the extent there were any errors in the agency's evaluation, none of those instances resulted in competitive prejudice to the protester.

Licensing

YWCA attempts to link unrelated RFP provisions to California state regulations that are not included or cited in the RFP in an effort to create a new RFP requirement that--in YWCA's view--the awardee's proposal does not satisfy. As relevant to the protester's claim, the RFP required offerors to include in their cost proposals: (1) a staffing chart, and (2) "proof that [the offeror] is able to obtain a license to operate in [California] within 30 days of contract award."⁶ RFP at 91-92. In the statement of work, the RFP also required the contractor to include a licensed/practical vocational nurse training program among the training programs offered to Job Corps participants.⁷ Id. at 14. YWCA argues that the RFP's cost proposal section does not merely require proof that an offeror can obtain a California operating or business license within 30 days of award, but also similar proof that an offeror will be able to obtain a California license to operate a licensed/practical vocational nurse training program. Comments & Supp. Protest at 5-6. Put another way, even though the RFP did not incorporate or cite to the California Code of Regulations, the protester contends that the RFP's requirement for an offeror to prove its ability to later obtain a California operating license also incorporates the specific substance of the California licensing requirements for licensed/practical vocational nurse training programs. Id.

As relevant to YWCA's interpretation of the RFP, the California Code of Regulations requires a licensed vocational nurse career training program to have a nursing director. Cal. Code Regs. tit. 16 § 2529(c)(1) (2014). YWCA combines the solicitation's requirement for "a license to operate" with this provision of the California Code of Regulations to assert that offerors were required to include a nursing director in their staffing plans. Comments & Supp. Protest at 5-6. Relying on this interpretation of the RFP, the protester then argues that DOL should have found MTC's proposal to be unacceptable because MTC's staffing plan did not include a nursing director.⁸ Id.

⁶ The RFP did not specify the proof sought regarding the California operating license.

⁷ The licensed practical/vocational nurse career training program is one of 16 such programs the contractor is required to provide. RFP at 14. Several of the other training programs, such as those for dental hygienists and pharmacy technicians, also appear to require a California license. See generally Cal. Code Regs. tit. 16.

⁸ YWCA specifically argues that MTC's proposal should have been found unacceptable under the RFP's technical factor. Protest at 17. Although we do not address the

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DOL contends that YWCA's interpretation is unreasonable and inconsistent with the RFP because it would create unstated evaluation criteria. MOL at 17. The agency further asserts that securing licenses for such training programs is a matter of contract administration that our Office will not review. Id. at 16-17 citing 4 C.F.R. § 21.5(a).

The kernel of YWCA's protest is whether the RFP requirement for proof that an offeror can obtain a license to operate in California after award also incorporates the substantive elements of the California licensing regulations applicable to the vocational programs to be provided by the Job Corps contractor. Where a dispute exists as to a solicitation's actual requirements, we begin by examining the plain language of the solicitation. Point Blank Enters., Inc., B-411839, B-411839.2, Nov. 4, 2015, 2015 CPD ¶ 345 at 4. We resolve questions of solicitation interpretation by reading the solicitation as a whole and in a manner that gives effect to all provisions; to be reasonable, and therefore valid, an interpretation must be consistent with such a reading. Desbuild Inc., B-413613.2, Jan. 13, 2017, 2017 CPD ¶ 23 at 5. Furthermore, we defer to the plain meaning of the provision. See ManTech Adv. Sys. Int'l., Inc., B-416374, Nov. 27, 2018, 2018 CPD ¶ 408 at 7.

The protester's interpretation of this provision is unreasonable and inconsistent with the plain meaning of the RFP. The phrase "a license to operate" as used in the solicitation here means the single license that allows a contractor to conduct a business of that type in a particular jurisdiction; this reading is consistent with the term as applied in our prior decisions. See, e.g., Walden Sec., B-407022, B-407022.2, Oct. 10, 2012, 2012 CPD ¶ 291. YWCA's interpretation is also unreasonable and inconsistent with the RFP because it would add detailed evaluation criteria to the RFP without any notice to offerors. As previously stated, the RFP does not incorporate the licensing requirements of the California Code of Regulations. Thus, while the RFP only requires offerors to provide proof of their ability to obtain "a license," the protester's reading would require offerors to provide proof of their ability to obtain all relevant California licenses. This interpretation is inconsistent not only with "license" used here in the singular, but also with the absence of any other reference to a license in the RFP. There is no basis to read the provision as relating to more than one license. See Command Mgmt. Servs. Inc., B-292893.2, June 30, 2004, 2004 CPD ¶ 168 at 3-4. Indeed, there is nothing in the solicitation to suggest that the license requirement is anything more than a general license to operate the Job Corps center. YWCA's interpretation is not reasonable. HP Enters. Servs., LLC, B-409169.3, B-409169.4, June 16, 2014, 2014 CPD ¶ 179 at 6.

To the extent that the provisions were susceptible to the interpretation advanced by the protester, the solicitation would be patently ambiguous and YWCA was required to protest any such ambiguity prior to the deadline for receipt of proposals. 4 C.F.R.

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protester's arguments here, the staffing plan and operating license requirements are not addressed in the agency's intended technical evaluation. RFP at 98-101.

§ 21.2(a)(1). Furthermore, with regard to the California vocational training program licenses, the Californian authorities will, pursuant to Californian law, determine whether MTC is eligible to receive the nursing training program license and any other licenses needed to perform the contract. Therefore, the issue of whether MTC ultimately obtains the licenses for the various career technical training programs is a matter of contract administration, which our Office does not review. See 4 C.F.R. § 21.5(a); United Segurança, Ltda., B-294388, Oct. 21, 2004, 2004 CPD ¶ 207 at 4. On this record, we conclude that there is no basis to disturb DOL's award to MTC.

Relevant Experience

Next, YWCA contends that DOL failed to evaluate the relevant experience of MTC's subcontractors. Comments & Supp. Protest at 48. In essence, YWCA asserts that the agency's documented evaluation is so insubstantial that the agency could not have reasonably evaluated the relevant experience of MTC's proposed subcontractors.⁹ Id.

In reviewing an agency's evaluation, we will not reevaluate technical proposals; instead, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and procurement statutes and regulations. Raytheon Co., B-413981, Jan. 17, 2017, 2017 CPD ¶ 40 at 6. An offeror's disagreement with the agency's evaluation, without more, is insufficient to render the evaluation unreasonable. Mare Sols., Inc., B-413238, B-413238.2, Sept. 14, 2016, 2016 CPD ¶ 259 at 9 citing Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7.

The RFP instructs offerors to "include any relevant experience regarding predecessor companies, key personnel who have related experience or subcontractors that will perform major or critical aspects of the requirement." RFP at 86. In its evaluation, the agency was to "consider information for the offeror or entity and/or its principals proposed as the prime contractor, as well as subcontractors that will perform major or critical aspects of the requirement, when such information is relevant to this procurement." Id. at 102.

DOL contends that its relevant experience evaluation discussed MTC's subcontractor. Supp. MOL at 3-4. The record shows that DOL's evaluation for this factor contains narratives for the strengths assigned; one of these narratives mentions MTC's subcontractors.¹⁰ AR, Tab 21, TEP Report at 35. The inclusion of MTC's subcontractor

⁹ Although YWCA challenges the agency's evaluation as insufficient to support the adjectival rating, the protester does not argue that MTC's proposal itself provides an inadequate basis for the assigned adjectival rating.

¹⁰ YWCA argues that the agency's evaluation of MTC's relevant experience was flawed because the evaluation itself uses the term subcontractor in the singular, while MTC proposed multiple subcontractors. Comments & Supp. Protest at 48; compare also AR, Tab 22, SSD at 24 with AR, Tab 9, MTC Technical & Relevant Experience Proposal

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in a strength shows that the agency reviewed the proposal, including the relevant experience of the subcontractor. Furthermore, the contracting officer confirms that the agency reviewed MTC's proposal, which contains considerable detail about the experience of its proposed subcontractor. Supp. COS at 2; Supp. MOL at 5-7 (with numerous detailed citations to the relevant portions of MTC's proposal).¹¹ Where, as here, the contemporaneous record is sufficient and the information provided by the agency during the protest is reasonable and consistent with the contemporaneous record, we find no basis to sustain the protest. Mare Sols., Inc., supra.

Misleading Discussions

The protester also alleges that the agency's discussions were misleading because of a significant weakness the agency assessed YWCA's proposal under the staff resources factor, staff development and incentives subfactor, for inadequate detail in relation to staff performance incentives. AR, Tab 22, SSD at 35. The RFP required offerors to describe their methods of rewarding staff, including an evaluation of any incentive payments and the timetable for such payment. RFP at 88. The RFP provided that an offeror's "[s]taff [d]evelopment and [i]ncentives will be evaluated to determine the appropriateness and adequacy of the staff development, retention, and incentives." Id. at 103. The agency's final evaluation assessed a significant weakness to YWCA's proposal as follows:

Four of [YWCA's] proposed awards and incentives do not specify a timetable for payment. This information was required within the RFP. The offeror failed to respond to the RFP question in terms of timelines for the incentives and specific positions that are eligible for awards. For example, no timelines were included for the Executive Management, Superior, Career Management Team, Security/Center protection. In addition, the positions that compose the Executive Management Team were not listed.

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at 14. The agency argues that the reference to a single "subcontractor" is correct, because MTC's subcontractors are part of a single "coalition" of small businesses. MTC's proposal describes its small business subcontractor as a "coalition of small businesses." Supp. MOL at 3; AR, Tab 9, MTC Technical & Relevant Experience Proposal at 14. On this record, we do not find that the agency's reference to a single "subcontractor," rather than multiple "subcontractors," was an error in the agency's evaluation.

¹¹ Although we generally give little weight to reevaluations and judgments prepared in the heat of the adversarial process, 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. Desbuild, Inc., supra, at 7 n.11. Here, the contracting officer's explanation is credible and consistent with the contemporaneous record.

This issue was raised during the 1st and 2nd [requests for final proposals], but the offeror still failed to provide this required information.

AR, Tab 22, SSD, at 35. YWCA was advised of this weakness during its first round of discussions. Protest, Exh. 3, First Debriefing at 10. The parties disagree as to whether this weakness was also included in the agency's second round of discussions, which was conducted after the first protest. Compare Comments & Supp. Protest at 21 with MOL at 25-26.

YWCA received the following adjectival ratings for the subfactors under the staff resources factor:

Staff Resources subfactors in descending order of importance	Rating
Adequacy of Staffing-Organization	Marginal
Staff Schedules Covering Critical Functions	Acceptable
Corporate Oversight and Support	Acceptable
Key Personnel: Center Director	Acceptable
Staff Development and Incentives	Marginal
Transition-in and Transition-out	Acceptable
Staff Position Descriptions	Acceptable

AR, Tab 22, SSD at 32. These ratings resulted in an overall adjectival rating of acceptable for the staff resources factor. Id.

YWCA asserts that the assignment of a significant weakness to its proposal was improper for either one of two reasons. First, if the discussions are viewed as successive, then because the weakness was not included in the second round of discussions, the protester reasonably concluded that the agency's objection had been resolved after the initial round of discussions. Protest at 22-26; Comments & Supp. Protest at 18. Alternatively, if the second discussion round is viewed as a replacement of the first, then DOL's second discussions omitting this issue were misleading. Protest at 22-26; Comments & Supp. Protest at 20.

The agency contends that this issue was raised in each of the previous rounds of discussions, regardless of the variations between the two discussions.¹² MOL at 25. DOL further argues that YWCA cannot show that the assignment of this significant weakness resulted in competitive prejudice. Id. at 26. In this regard, the agency asserts that the removal of the significant weakness would not improve YWCA's staff resources adjectival rating. Id. Furthermore, DOL contends that, even assuming for the

¹² DOL also asserts that the second evaluation "was a completely new evaluation [that] supersedes the previous evaluation. . . ." MOL at 25.

purposes of discussion that the adjectival rating did improve, given the other adjectival ratings and the preeminence of the technical factor, the protester would remain lower-rated and higher-priced as compared to MTC. Id.

Our Office has found that where, after discussions have concluded, an agency identifies concerns relating to a quotation or proposal that should have been apparent to the agency prior to discussions, the agency should reopen discussions in order to raise its concerns. Al Long Ford, B-297807, Apr. 12, 2006, 2006 CPD ¶ 68 at 8; Mechanical Contractors, S.A., B-277916.2, Mar. 4, 1998, 98-1 CPD ¶ 68 at 5. However, our decisions also provide that, where an agency erred in its discussions, we will not sustain a protest if the errors did not result in prejudice to the protester. American Int'l Contractors, Inc., B-260727, May 31, 1995, 95-1 CPD ¶ 266 at 7. Competitive prejudice is an essential element of every viable protest. Armorworks Enters., LLC, B-400394.3, Mar. 31, 2009, 2009 CPD ¶ 79 at 3. Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions; that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. CSI Aviation, Inc., B-415631 et al., Feb. 7, 2018, 2018 CPD ¶ 68 at 7.

We need not resolve whether the discussion rounds were successive or whether the second replaced the first, and by extension the issue of whether the timetable for payout of incentives was raised in the second round of discussions, because we find that any error would not result in competitive prejudice to the protester. Even if YWCA were able to resolve the significant weakness here and improve its adjectival rating for the staffing development and incentives subfactor, this subfactor is the fifth most important of seven subfactors. Given YWCA's other subfactor ratings, we cannot conclude that an improvement in YWCA's adjectival rating for this subfactor would result in an improvement in the overall rating for the staff resources factor.

Furthermore, even if the adjectival rating for the staff resources factor improved to very good, YWCA's proposal would still remain lower-rated and higher-priced, considering the relative importance of the factors and MTC's superior technical factor rating. Of note, in the RFP's factor weighting scheme, the technical approach factor by itself was more important than all of the other four non-cost factors combined, and the relevant experience and past performance factors were equal in weight to the technical approach factor. RFP at 98. As such, the staffing resources factor occupied a very small part of the overall evaluation. In sum, we conclude that, even if DOL's second round of discussions were misleading, YWCA cannot show that it was competitively prejudiced. Trauma Serv. Grp., B-254674, B-254674.2, Mar. 14, 1994, 94-1 CPD ¶ 199 at 5; CSI Aviation, Inc., B-415631 et al., Feb. 7, 2018, 2018 CPD ¶ 68 at 7; Pacific Architects & Eng'rs Inc., B-236432, Nov. 22, 1989, 89-2 CPD ¶ 494 at 5.

Cost Realism

Finally, YWCA contends that the agency's cost realism evaluation was incomplete, based on incorrect information, and the product of unequal treatment. Comments &

Supp. Protest at 48. For example, the protester claims that DOL improperly reduced MTC’s cost incentive fee without any reasonable basis for this change. Id. at 49. The protester argues that this resulted in an improper downward cost adjustment of several hundred thousand dollars in MTC’s favor.¹³ Id.

When agencies evaluate proposals for the award of cost-reimbursement contracts, an offeror’s proposed estimated costs are generally not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. Advanced Scis., Inc., B-259569.3, July 3, 1995, 95-2 CPD ¶ 52 at 11. Consequently, a cost realism analysis must be performed by the agency to determine the extent to which an offeror’s proposed costs represent what the contract should cost, assuming reasonable economy and efficiency. FAR §§ 15.305(a)(1), 15.404-1(d); Pueblo Env’tl. Sol., LLC, B-291487, B-291487.2, Dec. 16, 2002, 2003 CPD ¶ 14 at 13. Our review of an agency’s judgment in this area is limited to determining whether the agency’s cost evaluation was reasonably based and not arbitrary. Information Ventures, Inc., B-297276.2 et al., Mar. 1, 2006, 2006 CPD ¶ 45 at 7.

The RFP’s minimum and maximum incentive fees, offerors’ proposed fees, and the agency-adjusted fees, are as follows:

	Min	Max	MTC		YWCA	
			Proposed	Adjusted	Proposed	Adjusted
Technical Performance Incentive Fee	0%	2.4%	[DELETED]%	2.4%	[DELETED]%	2.4%
Cost Incentive Fee	3%	4%	[DELETED]%	3%	[DELETED]%	3%

RFP at 28; AR, Tab 20a, Cost Evaluation, Offeror A Tab, Cell 222F; AR, Tab 22, SSD, at 63. MTC proposed a cost incentive fee of [DELETED] percent. AR, Tab 22, SSD at 50. However, for the most probable cost evaluation, the agency reduced this fee to 3 percent, explaining as follows:

[T]o ensure a level playing field and allow for a more effective comparison to the Independent Government Cost Estimate (IGCE) and the other proposal, the Government adjusted both offerors’ proposed incentive fee rates to reflect the maximum technical performance incentive fee (2.4%) and minimum cost incentive fee (3%). These are the stated fees in [. . .] the RFP and do not commit the Government to paying the fees if they are not earned in accordance with the RFP [. . .].

¹³ The protester contends that DOL improperly reduced MTC’s probable cost by \$369,964. YWCA Ltr. to GAO, Feb. 26, 2018. As discussed in more detail below, the record shows that, due to an agency calculation error, the reduction in MTC’s probable cost was only \$39,904. AR, Tab 22, SSD at 51. The facts here render immaterial any differences in the reduction to MTC’s probable cost.

AR, Tab 22, SSD, at 44; see also AR, Tab 20, Price & Cost Analysis at 1 for identical language. The effect of the adjustment to MTC's costs was to decrease MTC's most probable cost by approximately \$370,000.¹⁴ AR, Tab 22, SSD, at 50. DOL also decreased YWCA's technical performance incentive fee and increased YWCA's cost incentive fee. Id. at 61. The combined effect of these adjustments was to increase YWCA's most probable cost by approximately \$1.5 million. Id. at 61, 63.

Even if we viewed the agency's changes to the proposed fees as improper, that error alone would not be a sufficient basis for our Office to sustain the protest. Competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest, even if deficiencies in the procurement are found. HP Enter. Servs., LLC, B-411205, B-411205.2, June 16, 2015, 2015 CPD ¶ 202 at 6; Booz Allen Hamilton Eng'g Servs., LLC, B-411065, May 1, 2015, 2015 CPD ¶ 138 at 10 n.16; Colonial Storage Co.-Recon., B-253501.8, May 31, 1994, 94-1 CPD ¶ 335 at 2-3.

Thus, in light of the fact that our Office found no basis to sustain any of the other protest grounds, whether for lack of merit or prejudice, even if this error in calculating MTC's probable cost were corrected, MTC would remain the highest-rated, lowest-priced offeror. Thus, it does not appear that, but for the alleged errors, the protester would have had a substantial chance for award. For this reason, we conclude that YWCA's arguments concerning the evaluation of MTC's proposed cost fail to demonstrate the possibility of competitive prejudice. Without the possibility of prejudice, this protest ground is denied. DynCorp LLC, B-411465, B-411465.2, Aug. 4, 2015, 2015 CPD ¶ 228 at 13 (denying protest where cost realism errors would not materially change the parties' competitive position).

The protest is denied.

Thomas H. Armstrong
General Counsel

¹⁴ The record suggests that the agency's SSD contains a non-prejudicial error. In calculating MTC's most probable cost, it appears the agency used the higher, unadjusted proposed center cost, rather than the lower, adjusted amount, in the comparison table in the SSD. Compare AR, Tab 22, SSD, at 50 with id. at 51, 63. This resulted in an apparent overstatement of MTC's most probable cost by \$330,060. Furthermore, it appears that the agency made the same error in calculating YWCA's most probable cost, thus understating YWCA's most probable cost in the comparison table by approximately \$1.5 million dollars. Compare AR, Tab 22, SSD, at 61 with id. at 63. The agency, however, believed that it was comparing the adjusted prices. AR, Tab 22, SSD, at 50-63. Because the errors simply minimized the existing price differential, without affecting the order of the offerors' prices as compared to one another, neither error is prejudicial to the protester.