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# Decision

**Matter of:** The First Choice, LLC

**File:** B-417196; B-417196.2; B-417196.3

**Date:** March 25, 2019

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## DIGEST

1. Protest that agency misevaluated the protester’s proposal under the technical and past performance factors is denied where the evaluations were reasonable and consistent with the solicitation.
2. Protest challenging the agency’s evaluation of the protester’s fixed price as unrealistic is denied where the solicitation stated that the evaluation would assess whether the offered prices reflected a clear understanding of the requirements, posed risk, or would otherwise have an impact on technical evaluation, and where the agency performed an adequate realism assessment in the context of a fixed-price commercial item procurement by comparing elements of the protester’s price to the agency’s independent estimate.
3. Protest that agency should have rejected awardee’s proposal is denied where contracting officer considered that awardee’s price was higher than agency estimate and other offered prices, and exercised business judgment to determine that awardee’s price was nevertheless reasonable.

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## DECISION

The First Choice, LLC (TFC), of Fort Washington, Maryland, a small business, protests the award of a contract to RER Solutions, Inc., of Herndon, Virginia, also a small business, under request for proposals (RFP) No. 73351018R0010, issued by the Small

Business Administration (SBA) for commercial data analysis and loan recommendation services for the SBA Office of Disaster Assistance (ODA). TFC argues that the SBA misevaluated the proposals and made an unreasonable source selection decision.

We deny the protest.

## BACKGROUND

The RFP, issued on September 7, 2018, requested proposals from small businesses to provide services under an indefinite-delivery, indefinite-quantity contract for a 1-year base period and four option years, and for the issuance of the initial 1-year task order. RFP at 13. The statement of work provided that the contractor would be given loan application data that it would use to obtain and analyze additional data from other sources; prepare a loan recommendation based on industry standard loan-making practices; and transmit its recommendation (in particular, to approve or decline the loan application) along with the supporting data used to make the recommendation to the agency electronically within 10 minutes of receiving the application. Id. at 8, 12; RFP amend. 1 at 25-27. Orders were to be issued either on a fixed-price or a time-and-materials/labor hour basis, and offerors were required to provide fully-loaded fixed-price labor rates, and fixed prices for each loan recommendation, which could include tiered prices (that is, discounts for larger quantities of recommendations). RFP at 4-5.

The contract (including the first task order) would be awarded to the offeror whose proposal provided the best value under four factors, in descending order of importance: technical approach, information technology (IT) security plan, past performance, and price. Id. at 40. The RFP listed a detailed set of seven subfactors under the technical approach factor, and four subfactors under the IT security plan factor. Id. at 41-43. The past performance evaluation would assess whether the past performance demonstrated a probability of success on the required effort, which would include assessing “past performance of managing contracts of at least \$5 million annually as well as the past performance on prior similar efforts” to the RFP statement of work. Id. at 43.

The price evaluation could consider “whether the cost/price adequately reflects an understanding of the project,” and would be analyzed “to determine if it is reasonable for the work to be performed, reflects a clear understanding of the requirements, and is consistent with the technical proposed solution.” Id. at 43-44. The price evaluation would also be used “to identify potential risk” by considering whether “any aspect of a proposal . . . could have significant negative cost/price consequences for the Government,” which could then affect the assessment of best value. Id. Further, the RFP advised offerors:

The Technical Evaluation Committee reserves the right to revise a Technical consensus score based on information within the Price Volume when the Technical Evaluation Committee feels that content within the

Price Volume will have an impact on technical evaluation factors or subfactors.

Id.

Performance would begin with the contractor implementing a system during the initial 6 months of performance. The system implementation would require the contractor to document the agency's loan approval business rules, after which it would integrate the business rules into its system. Further, the RFP advised offerors that the agency was not seeking the development of a new system and cautioned offerors:

It is important to note that ODA is NOT seeking a contractor to build or customize a system or the purchase of software/hardware. . . . The contractor will begin providing recommendations after the documenting and implementing business rules, system integration, system testing [are] completed and ready to go live. This should take no more than six months from the date of contract award[.]

RFP at 7.

After the completion of its system implementation, the contractor would begin receiving loan applications from the SBA and providing loan recommendations. The RFP listed the types of information the contractor was to obtain and analyze in making a loan recommendation:

Property specific characteristics such as: location of disaster damaged property; ownership of disaster damaged property; square footage of disaster damaged property; value of disaster damaged property; flood zone determination of disaster damaged property; whether disaster damaged property is located over a body of water; whether property is owner-occupied or rented.

Applicant specific characteristics such as: primary residency of applicant; character of applicant; creditworthiness of applicant; income of applicant; business activity of applicant; size standard of applicant based on SBA size determination; fraud detection on applicant.

RFP at 9.

The SBA received proposals from multiple offerors. After evaluating the initial proposals, the agency established a competitive range of three offerors, including RER and TFC, and conducted discussions.<sup>1</sup> Agency Report (AR) at 3; Second Supp. AR at 5. During discussions, the SBA identified a number of issues for TFC, including

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<sup>1</sup> The third offeror's proposal and evaluation are not relevant here.

concerns about its low prices and a lengthy set of assumptions, conditions, and exceptions that were incorporated into the proposal. As relevant here, the agency advised TFC:

The cost provided per loan does not appear realistic based on [the agency's] history of performing a similar action. The information required to fulfil this requirement requires integration with credit bureaus, vesting agencies (local county assessors), flood mapping agencies, property specific agencies, and many others. TFC's proposed per loan price to acquire this data appears unrealistically low, please confirm that you can acquire all required data at the prices offered.

AR Tab 9, Discussions to TFC (Nov. 9, 2018), at 2-3.

In its final proposal revision (FPR), TFC responded:

Team TFC's pricing is accurate and includes the fulfillment of the requirements which consist of [DELETED], and others. [DELETED] [one of TFC's subcontractors] already has the data required to fulfil this requirement; therefore, we do not incur costs for collecting the information. By leveraging the relationship that we have with our [DELETED] [another TFC subcontractor], we have access to proprietary data sources, [DELETED], etc. Our proprietary solution allows us to pass on these low costs to SBA ODA through economies of scale as seen in the tiered pricing model previously submitted.

AR Tab 10, Protester's Response to Discussions (Nov. 14, 2018), at 10.

The final adjectival ratings and total prices for the protester and awardee were:

	RER	TFC	Government Estimate
<b>Technical</b>	Excellent	Satisfactory	
<b>IT Security</b>	Excellent	Excellent	
<b>Past Performance</b>	Excellent	Very Good	
<b>Total Price</b>	\$65.9 million	\$16.2 million	\$56.9 million
<b>Total w/o Initial Implementation</b>	\$(DELETED)	\$(DELETED)	\$51.9 million
<b>Price Evaluation</b>	Fair & Reasonable	Not Realistic	

AR Tab 12, Source Selection Decision, at 7, 36, 39.

The final evaluation identified multiple major weaknesses in TFC's FPR under the technical approach factor, including: the proposal appeared to require the firm to develop a custom business rules engine despite TFC's statements to the contrary during discussions; the proposal was subject to significant lengthy assumptions, conditions, and exceptions; and the proposal did not provide for 24/7 support

availability. Additionally, a minor technical weakness was assessed because TFC's FPR did not adequately address the firm's plan to comply with SBA ODA's policies and procedures. The final evaluation also assessed two past performance weaknesses relating to a major recent security breach by one of TFC's subcontractors, and a lack of past performance specifically related to loan underwriting. Id. at 27-31.

In reviewing TFC's pricing, the contracting officer made three points. Id. at 31. First, he noted that TFC's per-loan pricing was the second lowest, at \$[DELETED] (for consumer or business applicants, respectively) per loan, and that those prices were [DELETED] percent lower than the independent government estimate for that element. Id. at 31, 38. Additionally, he explained that despite TFC's claims, its low pricing made it "difficult to believe" that TFC would provide each loan recommendation at the offered per-loan price based on the information the RFP required it to obtain. Id. at 31.

Second, the contracting officer noted that TFC's initial implementation price of \$[DELETED] was the fourth-lowest of the proposals received.<sup>2</sup> While the evaluation concluded that it was reasonable to integrate systems for that price, TFC's approach did not merely require it to integrate systems; instead, TFC's approach required that it build a business rules engine, which did not appear to be feasible at that price. Id. The contracting officer acknowledged that TFC specifically stated that the firm was not proposing to build a system, and instead described its approach as integrating existing platforms and databases. However, he found that the agency's review of TFC's proposal did not show that it was based on an existing loan recommendation system, and that the SBA "can only assume that such a business rules engine would still need to be developed by TFC and would not be feasible at" its proposed implementation price. Id.

Third, the contracting officer concluded that TFC's "cost provided per loan d[id] not appear realistic" based on the agency's historic pricing. Id. He acknowledged that TFC explained that it could acquire all needed data at its proposed price, but the agency's experience was that even if TFC's subcontractor had some required data, it did not show that it had access to other required databases. Id. In addition, TFC had not provided a specific breakdown of its pricing when requested, that would show "how that cost was determined so that SBA could feel more comfortable with the feasibility and realistic nature of the cost." Id. Additionally, while TFC had stated in response to discussions that it was able to provide the required data at the price offered, the agency's "knowledge of market prices, the [government estimate], and its own in-house costs for similar services" justified additional significant concern that TFC lacked understanding of the contract requirements. Id.

Taken together, the contracting officer's final price analysis emphasized that TFC's per-loan pricing was [DELETED] percent lower than the agency's estimate of \$165, and that its implementation price was [DELETED] of the agency's \$5.0 million estimate. The

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<sup>2</sup> The price comparison included proposals beyond the three in the competitive range.

contracting officer concluded that TFC's pricing would not be realistic or feasible for TFC's approach, which appeared to require the firm to build a business rules engine. Id. at 38.

The contracting officer then reviewed the evaluation panel's recommendation for award to RER. He first noted that when compared to TFC, RER's technical approach had fewer risks and weaknesses; it had experience in "bulk speed decisioning" for a similar requirement; it would have "fast uptime to a solution" because it did not need to customize its business rules engine; and it had proposed a system that was already in existence and "currently recommending loans." Id. The evaluation also characterized RER's technical approach as superior, and noted that while RER's price was higher than other offerors, price was the least important factor, and RER's experience and technical solution were "worth the additional cost." Id. The evaluation recognized that RER submitted the highest price received, and that RER's price exceeded the agency estimate, but nevertheless concluded that the price was "within a reasonable range of the agency's [estimate]" and was "still considered reasonable." Id. at 38-39. Altogether, in the view of the panel, RER's proposal provided the best value. Id. at 38.

The contracting officer decided to award the contract to RER after concluding that RER's proposal met all requirements of the statement of work, its price was "fair and reasonable based on the [agency's estimate]," the proposal was excellent under all three non-price evaluation factors, the approach posed little risk, and the evaluators had unanimously recommended RER for award. Id. After receiving a debriefing, TFC filed this protest, which it supplemented twice based on documents produced by the SBA during the development of the protest record.

## DISCUSSION

TFC challenges the evaluation of its proposal under the technical and past performance factor, argues that the SBA held misleading discussions, and contends that the agency improperly evaluated TFC's price as unrealistically low. TFC also challenges the technical evaluation of RER's proposal and the assessment of its price as reasonable. Finally, the protester argues that these flaws resulted in the improper selection of RER's proposal for award. We address TFC's main arguments below, and conclude that the record does not provide a basis to sustain the protest.

### Interested Party

As an initial matter, the SBA argues that TFC is not an interested party because it did not validly represent that it was a small business. The SBA argues that on the due date for initial proposals, TFC's online representations and certifications using the SAM.gov website showed that TFC was other than small under the size standard applicable to the RFP. SBA First Dismissal Request at 1. In response, TFC argues that it was then and remains a small business, that it expressly represented itself to be a small business in its proposal, and that its online representations were erroneous and resulted from an administrative error about how to enter its financial data in SAM.gov. Protester's Opposition to Dismissal, attach. 1 (Declaration of Protester's President) at 1. That

confusion caused the firm, in effect, to identify annual revenue amounts that were 100 times greater than intended (which TFC corrected when the SBA raised the issue).

As recognized in our Bid Protest Regulations, the SBA has the exclusive jurisdiction to determine the size status of an offeror. 4 C.F.R. § 21.5(b)(1). However, the SBA has made no official size determination for TFC here. Instead, the SBA argues that notwithstanding the agency's treatment of TFC as eligible during the procurement, our Office must dismiss the protest on the basis that TFC did not validly represent itself as a small business, and thus is ineligible for award. SBA First Dismissal Request at 2.

Our determination of whether a protester is an interested party is a matter of our Office's own jurisdiction, which is necessarily distinct from the SBA's jurisdiction to determine an offeror's size status. As a result, the critical issue regarding our jurisdiction to consider this protest is not whether TFC is a small business, but whether it is an interested party. In arguably similar circumstances, we concluded that a protester that had entered data erroneously in SAM.gov (that is, erroneous data entries indicating higher annual revenues, thus making a protester appear to be other-than small), but corrected the entries when the issue was identified, was an interested party to challenge the terms of a small business set-aside. American Relocation Connections, LLC, B-416035, May 18, 2018, 2018 CPD ¶ 174 at 3. Similarly here, absent a definitive size determination by the SBA in the contemporaneous record, we conclude that TFC's representations that it was and is a small business, and the SBA's treatment of the firm as eligible during the procurement, are sufficient to show that TFC is an interested party to pursue its protest. Accordingly, we deny the SBA's dismissal request.

#### Technical Evaluation of TFC Proposal

TFC argues that the evaluation of its FPR as satisfactory was unreasonable because the SBA improperly assessed multiple weaknesses under the technical approach factor, which TFC argues were the result of misleading discussions and the agency's failure to consider TFC's proposed approach and responses to discussions.<sup>3</sup> Protest at 9-14; Protester's Comments & Supp. Protest at 14-35. The SBA argues that the technical evaluation was reasonable, and that the discussions appropriately advised TFC of the areas where the agency had concerns. AR at 9-10.

TFC's protests challenge a number of evaluated technical weaknesses, but for purposes of this decision, we discuss two challenges to major technical weaknesses below (and note the withdrawal of a challenge to a third major weakness).<sup>4</sup> The

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<sup>3</sup> Although TFC also argues that the SBA overlooked certain technical strengths that produced cost savings, we consider these challenges in the price realism section below.

<sup>4</sup> TFC also challenges other aspects of its technical evaluation, principally a weakness regarding the extent that it had committed to comply with SBA policies and procedures. Protester's Comments & Supp. Protest at 26-29. TFC has not shown that the assessment of this minor weakness was prejudicial given our conclusion above that the  
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evaluation of proposals is a matter within the discretion of the contracting agency. Vectrus Sys. Corp., B-412581.3 et al., Dec. 21, 2016, 2017 CPD ¶ 10 at 3. In reviewing an agency's evaluation, we will not substitute our judgment for that of the agency, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's evaluation criteria and with procurement statements and regulations. Id. By itself, a protester's disagreement with the agency's judgment assessing the relative merit of competing proposals does not establish that the evaluation was unreasonable. Id.

First, TFC argues that the SBA unreasonably viewed TFC's proposal as requiring it to build a new system to provide a customized software "[r]ules [e]ngine"<sup>5</sup> for making loan recommendations. In this regard, TFC's proposal discussed its use of the "[DELETED]," and described it as including an [DELETED], among other elements. AR Tab 7, at 6 (Protester's Technical Proposal at 3). The accompanying diagram of its "[h]igh [l]evel [s]olution [a]rch[itecture]" appeared to show one element of TFC's approach as providing a "[DELETED]," but also identified [DELETED]. Id. The narrative stated that another subcontractor, [DELETED], would provide its "[DELETED]. Id. at 6, 112 (Protester's First Task Order Proposal at 8). The proposal explained that the [DELETED]. Id. at 112.

Our review shows that TFC's proposed approach described the use of [DELETED] rules engine for its portion of the data, but not for the incorporation of other data elements. The proposal did not explain the method that TFC or its other subcontractor would use to achieve the inclusion of other data beyond that provided by [DELETED], or the application of SBA's business rules to make a loan recommendation based on the other data that the RFP also required. As a result, the record provides reasonable support for the evaluators' judgment that TFC's technical approach was incomplete and should be assessed a weakness.

Second, TFC challenges the assessment of a weakness because of excessive assumptions, conditions, and exceptions in its proposal. TFC argues that the RFP requested that offerors include all assumptions, conditions, and exceptions in a

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(...continued)

assessment of two major weaknesses was reasonable, and TFC's withdrawal of its challenge to the third.

<sup>5</sup> In this context, a "[r]ules [e]ngine" refers to a software tool that provides decisions based on a data set about a specific situation. These decisions address whether a specific situation meets or fails to meet various conditions (the rules). As a simple example, a rule could provide that a loan be declined where the applicant's location is not within an eligible area; that is, the rules engine would apply the rule--essentially comparing information about the application to the eligible geographic area--and would include that result as one element of the ultimate loan recommendation. See also AR Tab 7 at 13 (Protester's Technical Proposal at 10 (diagram of "[b]asic [r]ule [f]low [e]xample")).



separate section; that the RFP did not indicate they would be evaluated; that these items reflect TFC's and [DELETED] commercial practice; and that the SBA could not reasonably consider the quantity of assumptions, conditions, and exceptions to be a weakness without documenting specific conflicts with the RFP terms.<sup>6</sup> Protester's Comments & Supp. Protest at 20-22. The SBA argues that its assessment of a weakness was reasonable because TFC's significant assumptions, conditions, and exceptions represented a weakness because of their complexity. Supp. AR at 9. As examples, the source selection decision identified conditions regarding payments to subcontractor [DELETED], a right of termination by the contractor, and authority for [DELETED] to review the SBA's practices and procedures, and to have authorization to review agency documents, among other things. AR Tab 12, Source Selection Decision, at 29.

Our review of the record again supports the SBA's decision to assess a major weakness for this aspect of TFC's proposal. The terms at issue were identified as the [DELETED] Master Services Agreement, and were expressly referenced in TFC's proposal as being applicable to all work and data that was to be provided by [DELETED]. AR Tab 7, TFC Technical Proposal, at 59 (Proposal vol. II-a at 1). TFC's inclusion of those terms were reasonably viewed by the SBA as affecting whether the firm was committing to performance consistent with its proposal and the RFP. Based on the record here, we are not persuaded by TFC's arguments that its assumptions, conditions, and exceptions should not have been evaluated, or that the SBA was unreasonable in evaluating them as a weakness. Accordingly, we deny this ground of protest.

#### Past Performance Evaluation of TFC Proposal

TFC also challenges the evaluation conclusion that its past performance proposal led to the assessment of two minor weaknesses. First, TFC argues that the SBA improperly assessed a weakness because its subcontractor, [DELETED], experienced a wide-scale data security breach, even as it also credited TFC for the firm's plan for preventing

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<sup>6</sup> On this point, TFC argues that discussions regarding its assumptions, conditions, and exceptions were misleading because the agency did not specifically identify its concerns over individual terms. The record shows that the discussions expressed the agency's concerns that TFC's assumptions could result in TFC changing its solution from the one it proposed, and that the extent of TFC's assumptions, conditions, and exceptions represented a weakness. In our view, contrary to TFC's argument, the discussions were meaningful and expressly urged TFC to simplify and shorten its assumptions. The discussions therefore led TFC to the area of its proposal that concerned the agency and resulted in assessment of a weakness. Enumeration of each aspect of TFC's assumptions, conditions, and exceptions that concerned the agency was not necessary because discussions do not need to be exhaustive; instead, it is enough that an agency led the offeror into the areas of its proposal that required amplification or correction. Avacelle, Inc., B-258651, Jan. 24, 1995, 95-1 CPD ¶ 41 at 4.

an IT security breach. TFC argues that the record thus demonstrates unreasonable treatment of that issue in the evaluation of its team's past performance. Protester's Comments & Supp. Protest at 30-32. Second, TFC argues that the evaluation failed to consider the similarity of its past performance to the RFP requirements, and instead unreasonably assessed a weakness because TFC lacked past performance involving loan underwriting. In TFC's view, the RFP did not require experience in loan underwriting, but if it did, the proposal identified the firm's subcontractor's (that is, [DELETED]) experience in supporting an automated underwriting platform, and described the experience of the chief executive of one of its subcontractors and one of TFC's key personnel, both of whom had involvement in the past with applying underwriting criteria. Id. at 32-33; see AR Tab 10, TFC Response to Discussions, at 5-6.

The SBA argues that it reasonably assessed both minor weaknesses. The agency contends that TFC's past performance was properly considered separately from its proposed approach to handling IT security under the RFP. The agency also contends that it reasonably viewed past performance with loan underwriting to be relevant to this requirement for loan recommendation services, and that the evaluation reasonably assessed a minor weakness because the past performance of TFC's team did not show past performance relevant to that function. Supp. AR at 10-11.

An agency's evaluation of past performance, including its consideration of the relevance, scope, and significance of an offeror's performance history, is a matter of agency discretion which we will not disturb unless the agency's assessments are unreasonable or inconsistent with the solicitation criteria. Paragon Sys., Inc., B-414515, B-414515.2, June 29, 2017, 2017 CPD ¶ 240 at 9. Where a protester challenges an agency's past performance evaluation, our Office will review the evaluation to determine if it was reasonable and consistent with the solicitation's evaluation criteria and procurement statutes and regulations, and to ensure that the agency's rationale is adequately documented. Id. Neither of TFC's challenges demonstrates that the SBA's past performance evaluation was improper.

With regard to the protester's challenge of the agency's assessment of a weakness based on [DELETED] security breach, we see no inconsistency in the agency recognizing that TFC's approach to IT security in its proposal was excellent, but at the same time concluding that a major breach of data security in the past by its subcontractor warranted assessing a weakness. TFC also challenges the agency's conclusion that the firm lacked loan underwriting past performance. We agree with the SBA that the consideration of relevant past performance for a contract to provide loan recommendations could properly include considering whether an offeror had past performance involving loan underwriting.

Also, we agree with the SBA that the past performance shown in TFC's proposal did not show past performance involving loan underwriting decisions. Even the description of TFC's subcontractor identified the firm's role as providing data that its customer used to make its own underwriting decisions. Neither the description of that past performance

nor TFC's identification of two personnel who had roles performing loan underwriting, show that TFC's team had relevant past performance in loan underwriting. Thus the record supports the SBA's assessment of the second past performance weakness. In short, we find no basis in the record to sustain either of TFC's challenges to the evaluation of its past performance.

#### Price Realism Analysis of TFC Proposal

As noted above, the RFP provided that the price evaluation would assess whether each offeror's price was reasonable, complete, and "reflects a clear understanding of the requirements," among other things. RFP at 44. TFC argues that the RFP did not advise offerors that the SBA would assess price realism, and therefore the agency was prohibited from doing so. Additionally, even if the RFP had so provided, TFC argues that the evaluation of TFC's price was limited to a perfunctory comparison to the agency's estimate, while failing to consider the firm's unique approach that provided pricing advantages that allowed it to offer a low price.

The SBA argues that the evaluation of prices was consistent with the terms of the RFP, which advised offerors that the agency would, in effect, conduct a realism analysis. Additionally, the agency argues that it expressly referred to concerns about the realism of TFC's prices during discussions, thereby advising the firm that price realism was being evaluated.<sup>7</sup>

Where a solicitation anticipates the award of a fixed-price contract, an agency may provide for the use of a price realism analysis to assess the offeror's understanding of the requirements or to identify risk inherent in the offeror's proposal. R3 Gov't Sols., LLC, B-404863.2, Sept. 28, 2012, 2012 CPD ¶ 284 at 5. Where a solicitation does not provide for a price realism analysis expressly, we have nonetheless recognized that it may adequately inform offerors that price realism will be considered where the solicitation advises offerors that the agency would evaluate proposed prices to determine whether they reflected a lack of technical understanding and that the agency could reject the proposal for offering unrealistically low prices. Specmat Techs., Inc., B-414331.5, Nov. 29, 2017, 2017 CPD ¶ 370 at 7. The extent of the price realism

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<sup>7</sup> The SBA argues that even if the RFP did not specifically reference realism, TFC should have known the agency was assessing price realism when it received the discussions questions. The SBA also contends that TFC's arguments are untimely because it did not file a protest objecting to the consideration of price realism within 10 days of the discussions. We disagree with the SBA that the discussions provided to TFC placed the firm under an obligation to file a protest in the midst of the procurement to challenge that the agency could reach an improper evaluating judgment about the realism of its price. To the contrary, it was only after award that TFC learned the basis on which the SBA had evaluated its proposal, that TFC had a factual basis to challenge the evaluation, so this protest is timely. Accordingly, we declined to dismiss this aspect of TFC's protest as untimely.

analysis is for the agency to determine in its discretion, so this Office will not question the agency's price realism analysis unless it lacks a reasonable basis. M7 Aerospace, LLC, B-415252.4, B-415252.5, Nov. 9, 2018, 2018 CPD ¶ 387 at 6-7. While the RFP did not expressly identify the agency's price evaluation as including an assessment of price realism, it did sufficiently advise TFC that the SBA would assess offerors' prices to determine whether they showed an adequate understanding of the RFP requirements.<sup>8</sup> The RFP also expressly advised that the price evaluation could result in an assessment of risk, which could then be considered in the assessment of best value. RFP at 44.

The contemporaneous record shows that the contracting officer concluded that TFC's pricing was significantly below the agency's estimate and was therefore unrealistic. That conclusion reinforced the agency's concern in the technical evaluation that TFC did not adequately understand the requirements of the RFP. That lack of understanding was reflected in the technical evaluation, and in turn, the contracting officer's source selection judgment that RER's higher-priced proposal provided the best value to the agency. In our view, the agency's evaluation judgments were both reasonable and consistent with the RFP criteria, so we deny this aspect of TFC's protest.

#### Evaluation of RER Proposal

Finally, TFC challenges the evaluation of RER's proposal as excellent under the non-price factors. As stated above, these arguments were based only on speculation about RER's proposal and its proposed approach. For example, TFC argued that RER's subcontractor "likely" could not obtain access to data about the employment and income of loan applicants, so RER would incur additional costs to obtain that data, would be "unlikely" to obtain access to that data within the 6-month implementation period, and would pass the additional costs on to the SBA. Protest at 9-10. As a result, TFC contended that the evaluation of RER's proposal as excellent was unreasonable. Id. at 10.

The SBA argued that TFC's challenge to the evaluation of RER's proposal lacked a basis in fact, and was instead based on mere speculation about what TFC contended was likely or unlikely about the approach proposed by RER. The agency argued that this aspect of TFC's protest should be dismissed for failure to provide a sufficient factual basis.

We agreed with the SBA, and did not require development of the record on TFC's speculative protest grounds. Our Bid Protest Regulations require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the

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<sup>8</sup> TFC's proposed price was determined to be unrealistically low, but the SBA did not reject the firm's proposal. Rather, as described above, the SBA continued to consider TFC's proposal for award while including the agency's concerns about the firm's understanding of the requirements and the associated risk--which were consistent with the RFP provision--in making the source selection decision.

grounds stated be legally sufficient. 4 C.F.R. §21.1(c)(4) and (f). These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. Pacific Photocopy & Research Servs., B-278698, B-278698.3, Mar. 4, 1998, 98-1 CPD ¶ 69 at 4. A protester's speculation about the contents of a competitor's proposal does not provide a sufficient factual basis for a ground of protest, however. Mark Dunning Indus., Inc., B-413321.2, B-413321.3, Mar. 2, 2017, 2017 CPD ¶ 84 at 2. Accordingly, we dismiss TFC's challenges to the evaluation of RER's proposal.

TFC also challenges the contracting officer's determination that RER's price was reasonable, TFC argues that the record shows that RER's price was the highest, and significantly exceeded the government estimate. Second Supp. Protest at 2-3. TFC argues that the SBA lacked a reasonable basis to conclude that RER's price was reasonable, and should have rejected its proposal on that basis. Id.

In evaluating price reasonableness, agencies may use a variety of techniques, which include comparison of the proposed prices received in response to the solicitation, and comparison of the price to an independent government estimate. Federal Acquisition Regulation § 15.404-1(b)(2). A price reasonableness determination is a matter of administrative discretion involving the exercise of business judgment by the contracting officer that our Office will only question where it is shown to be unreasonable. Right One Co., B-290751.8, Dec. 9, 2002, 2002 CPD ¶ 214 at 5.

Our review of the record shows that the contracting officer specifically considered the price differences between RER and the government estimate and other prices received. The review showed that RER's price was higher than the estimate and was the highest in comparison to the other offerors. AR Tab 12, Source Selection Decision, at 38. The record also shows that contracting officer took into consideration RER's proposed approach and the value it provided, and determined that RER's price was within a reasonable range of the government estimate. Id. Given the contracting officer's specific consideration of price reasonableness, and the recognition that RER's price was both the highest and exceeded the government estimate, the judgment that RER's price was reasonable was within the contracting officer's discretion. Accordingly, we deny TFC's challenge to the contracting officer's determination that RER's price is reasonable.

The protest is denied.

Thomas H. Armstrong  
General Counsel