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# Decision

**Matter of:** Tyonek Global Services, LLC; Depot Aviation Solutions, LLC

**File:** B-417188.2; B-417188.3; B-417188.4; B-417188.5

**Date:** October 4, 2019

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## DIGEST

1. Protest challenging agency's evaluation of the awardee's past performance is sustained in part because the record demonstrates that the agency applied an inconsistent standard in evaluating relevancy.
  2. Protest challenging the agency's cost realism evaluation is sustained in part because the agency failed to reasonably evaluate the awardee's proposed overhead rates.
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## DECISION

Tyonek Global Services, LLC, a small business, of Anchorage, Alaska, and Depot Aviation Solutions, LLC (DAS),<sup>1</sup> a small business, of Chesapeake, Virginia, protest the award of a contract to Yulista Tactical Services, LLC, a small business, of Anchorage, Alaska, under request for proposals (RFP) No. N61340-19-R-0001, which was issued by the Department of the Navy, Naval Air Systems Command, for services in support of Naval aircraft, aircraft engines, and associated components and materials undergoing

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<sup>1</sup> DAS is a joint venture formed by AVMAC LLC, a small business, of Chesapeake, Virginia, and Affordable Engineering Services Inc. (AES), a small business, of San Diego, California.

depot-level maintenance (DLM). The protesters challenge the Navy's past performance evaluation, and Tyonek also challenges the agency's cost realism evaluation.

We sustain the protests in part and deny them in part.

## BACKGROUND

The Naval Aviation Maintenance Program (NAMP) sets maintenance policies, procedures, and responsibilities for all levels of naval aviation maintenance to ensure aviation material readiness and common safety standards. RFP, Statement of Work (SOW), § 2.3, note d(4), The Naval Aviation Maintenance Program, COMNAVAIRFORINST 4790.2C, Chapter 1, § 1.2.<sup>2</sup> The core principles of the NAMP are: (a) strict adherence to quality and safety procedures; (b) repair of aeronautical equipment and material at the level of maintenance that most efficiently uses resources to achieve operational objectives; (c) application of systematic planned maintenance to minimize material degradation of aircraft, engines, and equipment; and (d) collection and analysis of data to support changes to improve the efficiency, effectiveness, quality, and safety of naval aviation maintenance. Id., § 1.2.3.

The NAMP classifies maintenance into three levels based on complexity, depth, scope, and range of work performed. Id., Chapter 3, § 3.1.1.2. The three maintenance levels, in ascending order of complexity, are: (1) O-level maintenance; (2) I-level maintenance; and (3) DLM. O-level maintenance primarily includes inspecting, servicing, lubricating, adjusting, and replacing parts, minor assemblies, and subassemblies of aircraft, unmanned aircraft or systems, and aeronautical equipment. Id., § 3.1.2.1. O-level maintenance may either be performed by the activity that operates the aircraft or equipment, or by higher-level maintenance activities on assigned equipment or on aircraft undergoing depot rework. Id.

I-level maintenance is performed by designated maintenance activities responsible for supporting units operating aircraft and aeronautical equipment. Id., § 3.1.2.2. I-level maintenance primarily consists of: testing and repair of aeronautical components and support equipment; I-level calibration; technical assistance to supported units; incorporation of I-level technical directives; manufacture of selected aeronautical components, liquids, and gases; and performance of I-level maintenance, such as non-destructive inspection, when required. Id.

The most technically complex work is DLM. DLM is performed at or by fleet readiness center (FRC) sites to ensure continued flying integrity of airframes and flight systems during subsequent operational service periods, and on material requiring major overhaul or rebuilding of parts, assemblies, subassemblies, and end items. Id., § 3.1.2.3. DLM includes manufacturing of parts, modifying, testing, inspecting, sampling, reclamation,

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<sup>2</sup> References to the RFP and its components are to the version produced by the Navy that is conformed through RFP amendment three.

and providing engineering assistance and performing maintenance in support of O- and I-level maintenance. Id.

On December 11, 2018, the Navy issued the RFP as a set-aside for participants in the Small Business Administration's (SBA) 8(a) program seeking proposals for support services for aircraft, aircraft engines, and associated components and materials undergoing DLM. RFP at 1, 11. The contractor will perform DLM functions, including modernization, conversion, in-service repair, and disassembly, alongside government civilian and military personnel at: (1) FRC-Southeast at Naval Air Station (NAS) Jacksonville, Florida, Naval Station (NS) Mayport, Florida, and Cecil Commerce Center in Jacksonville, Florida; and (2) FRC-Mid-Atlantic at NAS Oceana, Virginia, and NS Norfolk, Virginia. RFP, SOW, §§ 3.1, 3.1.1. The RFP contemplated the award of an indefinite-delivery, indefinite-quantity contract with a 4-year ordering period. RFP at 16. Orders will primarily be made on a cost-plus-fixed-fee basis, with a fixed-fee contract line item for mobilization and a cost-reimbursable line item for travel. Id. at 2, 50.

Award was to be made on the basis of a best-value tradeoff between past performance and cost/price, with past performance being significantly more important than cost/price. Id. at 62. Under the past performance factor, the Navy would assign offerors a performance confidence assessment rating reflecting the agency's confidence that the offeror will successfully perform the RFP's requirements based on the offeror's recent and relevant past performance. Id. The RFP provided that the Navy would evaluate up to three past performance records for the prime offeror, and up to two records for each "principal team member." Id. The RFP defined a principal team member as a subcontractor, joint venture owner (joint venturer), partnership owner (partner), corporate parent, division, subsidiary, affiliate, or vendor that was "demonstrably proposed to provide at least 30% of the total number of labor hours (2,508,511) for the contract." Id. at 54.<sup>3</sup> The performance confidence assessment rating was to be based on relevancy and quality; only relevancy is germane to the issues raised in the protests. Id. at 62.

To evaluate relevancy, the Navy anticipated comparing the offerors' past performance references with the RFP's requirements in the following areas: (a) the offeror's role in the past performance effort, and its proposed role under the contract; (b) contract type; (c) scope, magnitude, and complexity; (d) place of performance; (e) the location and divisions of the offeror that performed the effort; and (f) period of performance of the past performance contract. Id. at 63. The RFP expanded on how the agency would evaluate scope, magnitude, and complexity. Under scope, the agency considered

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<sup>3</sup> The initial RFP precluded consideration of the past performance of a joint venture's owners or individual members. AVMAC, one of the members of the DAS joint venture, filed a pre-award protest challenging this aspect of the RFP. See AVMAC LLC, B-417188, Dec. 14, 2018. The Navy subsequently amended the RFP to allow the Navy to consider the past performance of a joint venture owner or member meeting the RFP's definition for a "principal team member." AVMAC then withdrew its protest.

whether the reference of the offeror or a principal team member was subject to the requirements of the Service Contract Act (SCA) and performed in an International Organization for Standardization (ISO)-9001 compliant environment, as well as the scope of the DLM functions to perform rebuilds, overhauls, repairs, and modifications to aircraft and aircraft components under the RFP. Id. Under magnitude, the agency compared the reference's level of effort to the RFP's anticipated average annual number of maintenance support service labor hours (640,471 annual hours). Id. Under complexity, the agency compared the complexity of work performed by the offeror or principal team member on the reference to the complexity of the RFP's DLM functions (performing rebuilds, overhauls, repairs, and modifications to multiple aircraft type platforms or components). Id. at 63-64.

The RFP also included guidance regarding the relative importance of different aspects of an offeror's past performance for an offeror's overall confidence assessment rating. The relevant language to the protest issues stated as follows:

- Work as a prime generally may be considered more relevant than work as a subcontractor.

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- Records with Scope that cover more DLM functions (rebuilds/overhauls, repairs, and/or modifications) to aircraft or aircraft components generally may be considered more relevant than records with fewer DLM functions (rebuilds/overhauls, repairs, and/or modifications) to aircraft or aircraft components.

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- Records with Complexity that cover DLM functions to aircraft and aircraft components generally may be considered more relevant than records that cover DLM functions to aircraft only or to aircraft components only.
- Records with Complexity that cover DLM functions to multiple aircraft type platforms generally may be considered more relevant than records that cover DLM functions to a single aircraft type platform.

Id. at 64 (emphasis in original).

The RFP identified additional considerations that could impact the confidence assessment rating or the tradeoff decision. Relevant here, the RFP provided that:

- [P]ast performance effort of the prime offeror performed as a subcontractor will generally not be considered as significant as past performance effort of the prime offeror performed as the prime; [and]

- [P]ast performance effort of a principal team member generally will not be considered as significant as past performance effort of the prime offeror.

Id. at 65.

Under cost/price, the RFP instructed offerors that all contract line items would be evaluated for completeness, balance, and reasonableness, and that the agency would also evaluate the cost-plus-fixed-fee contract line items for realism. Id. at 66. The RFP also instructed offerors to substantiate their respective proposed rates by providing a Defense Contract Audit Agency (DCAA) Provisional Billing Rate Approval Letter, forward pricing rate agreement (FPRA), forward pricing rate recommendation (FPRR), or other substantiating information, and specifically advised that the Navy would evaluate the offeror’s compliance with the requirement.<sup>4</sup> Id. at 60, 67.

The Navy received four proposals in response to the RFP, and subsequently established a competitive range of three, consisting of the two protesters and the awardee. Tyonek Agency Report (TAR), Tab 7, Source Selection Decision (SSD), at 1.<sup>5</sup> Following several rounds of discussions and the submission of final proposal revisions, the Navy evaluated the final proposals of the three offerors as follows:

	<b>Past Performance Confidence</b>	<b>Total Proposed Cost/Price</b>	<b>Total Evaluated Cost/Price</b>
<b>Yulista</b>	Substantial	\$106,364,607	\$106,364,267
<b>DAS</b>	Substantial	\$108,050,232	\$108,047,225
<b>Tyonek</b>	Substantial	\$107,409,219	\$108,648,698

Id. at 5; TAR, Tab 8, Source Selection Advisory Council (SSAC) Proposal Analysis Report (PAR), at 1.

The Source Selection Authority (SSA) first documented his consideration of each offeror’s unique past performance, and concurred with the lower-level evaluators that the offerors’ records, on the whole, reflected a history of working on relevant contracts

<sup>4</sup> A FPRA is a written agreement negotiated between a contractor and the government to make certain rates available during a specified period for use in pricing contracts or modifications. Federal Acquisition Regulation (FAR) § 2.101. A FPRR is a rate set unilaterally by the administrative contracting officer for use by the government in negotiations or other contracts actions when FPRA negotiations have not been completed or when the contractor will not agree to a FPRA. Id.

<sup>5</sup> Our Office separately developed the protests, and, therefore, the Navy submitted separate agency reports. We refer to the agency report responding to Tyonek’s protest as TAR, and to the agency report responding to DAS’ protest as DAR.

and with quality performance. TAR, Tab 7, SSD, at 2. The SSA also distinguished the offerors' past performance records in several respects. For example, he found that the DAS joint venture had no relevant experience itself; rather, DAS relied on the experience of its individual members. DAR, Tab 7, SSD, at 4. The SSA also found that Yulista and Tyonek each had one relevant past performance record as a prime contractor. Tyonek's reference, however, only reflected approximately four months of performance, and the first month was a transition period. TAR, Tab 7, SSD, at 3, 4-5.

Based on his consideration of the totality of the offerors' respective past performance records, the SSA concluded that the records "instill in me the same level of confidence such that any splitting of hairs of any particular consideration point within the Factor would not change the outcome of my perceived confidence, nor the relative comparability of that confidence." Id. at 5. As a result, the SSA concluded that he saw "no meaningful difference" in the records that would warrant the payment of an associated cost premium and selected Yulista's proposal for award. Id. Tyonek and DAS subsequently filed these protests.

## DISCUSSION

The protesters primarily challenge the Navy's evaluation of Yulista's past performance and thereby dispute the agency's conclusion that there were no meaningful distinctions between the offerors' past performance records. Tyonek also challenges the Navy's cost realism evaluation, arguing that the upward adjustments to its cost/price proposal were unreasonable and that the agency failed to reasonably evaluate Yulista's proposed costs. For the reasons that follow, we sustain the protesters' past performance protest grounds challenging the evaluation of Yulista's past performance, and Tyonek's protest that the agency failed to reasonably evaluate Yulista's proposed overhead rates. We otherwise find no basis on which to sustain the protests.<sup>6</sup>

### Past Performance--Background

Before turning to the protesters' past performance arguments, additional background is needed for the analysis. Yulista submitted three past performance references, one that Yulista is performing as a prime contractor and two performed by its principal team member Y-Tech Services, Inc., as a prime contractor. TAR, Tab 10, Yulista Past Performance Eval. Rep., at 2. The past performance evaluation team (PPET) rated Yulista's prime contract, under which Yulista performs, among other services, O- and I-maintenance and DLM for the National Aeronautical and Space Administration's (NASA) aviation assets, as very relevant. As to scope, the evaluators found the reference involved essentially the same as the RFP's scope for the following reasons: Yulista is the prime contractor on the NASA effort; the effort involves a cost-

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<sup>6</sup> The protesters raise other collateral arguments. While our decision does not address every argument, we have carefully reviewed the entirety of the protesters' arguments and find that none provides a basis on which to sustain the protest.

reimbursable contract requiring performance at multiple sites in an ISO compliant environment; the contract requires performance of DLM functions including rebuilds/overhauls, repairs, and modifications; and the contract requires compliance with the SCA. Id. at 3. As to magnitude, the PPET found that the reference involves essentially the same magnitude as required by the RFP here because Yulista is anticipated to perform an average of [DELETED] maintenance support service labor hours a year for NASA, as compared to the anticipated [DELETED] hours that Yulista proposed to perform on the contract here.<sup>7</sup> Id. As to complexity, the PPET found that the reference involves essentially the same complexity as here because Yulista performs DLM work including rebuilds/overhauls, repair, and modifications for multiple types of aircraft platforms. Id.

The PPET rated Y-Tech's first reference, a prime maintenance contract performed for the Department of the Army, on the low end of very relevant. As to scope, the PPET found the reference involved essentially the same as the RFP's scope for the following reasons: Y-Tech was the prime contractor on the Army effort; the effort involved a cost-reimbursable contract that required performance at multiple sites in an ISO compliant environment; the contract required performance of DLM functions including rebuilds/overhauls, repairs and modifications; and the contract required compliance with the SCA. Id. at 4. As to magnitude, the PPET found the Army reference involved essentially the same level of effort as the RFP here. Y-Tech performed an average of [DELETED] annual maintenance service support labor hours on the Army effort, which is more than the [DELETED] hours ([DELETED] percent) Y-Tech is proposed to perform here. Id. As to complexity, the PPET evaluated the reference as similar to the RFP's requirements. Although Y-Tech performed higher complexity maintenance functions on multiple aircraft platforms for the Army, Y-Tech did not perform any DLM on jet propulsion engines as required here. Id. at 5.

The PPET rated Y-Tech's second reference, a prime maintenance contract performed for the United States Coast Guard, on the high end of relevant. As to scope, the PPET found the reference involved essentially the same as the RFP's scope for the following reasons: Y-Tech is the prime contractor for the Coast Guard effort; the effort requires performance in an ISO compliant environment; the contract requires performance of DLM functions to include rebuilds/overhauls, repairs, and modifications; and the contract requires compliance with the SCA. Unlike the RFP here, however, the PPET noted that the effort involves a fixed-price contract with performance at only one site. Id. at 5-6. As to magnitude, the PPET found the Coast Guard reference involved essentially the same level of effort as the RFP here. Y-Tech performed an average of

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<sup>7</sup> The RFP provided that a past performance reference's magnitude would be compared to the RFP's anticipated level of effort of 640,471 hours a year. RFP at 63. As Yulista is proposed to perform [DELETED] percent of the required work, the agency compared the magnitude of Yulista's past performance reference to [DELETED] percent ([DELETED] hours) of the RFP's anticipated hours. TAR, Tab 10, Yulista Past Performance Eval. Rep., at 3.

[DELETED] annual maintenance support service labor hours on the Coast Guard effort, as compared to the [DELETED] hours Y-Tech is proposed to perform here. Id. As to complexity, the PPET found the reference's complexity similar to the RFP's requirements. Although Y-Tech performed induction, teardown, and repair of rotary-wing aircraft and components for the Coast Guard, Y-Tech did not perform DLM on fixed-wing aircraft, or gas turbine or jet propulsion engines as required here. Id. at 5-6.

DAS did not submit any past performance references for the joint venture; rather, it submitted two references each for joint venturers AES and AVMAC. The PPET rated AES' first reference, a prime contract with the Navy to provide DLM for FRC Southwest, as very relevant since it was essentially the same as the RFP in terms of scope, magnitude and complexity. As to scope, the PPET found: AES performed as the prime contractor on the Navy effort; the effort involved a cost-reimbursable contract requiring performance at multiple sites in an ISO compliant environment; the effort involved DLM functions including rebuilds/overhauls, repairs and modifications; and the contract required compliance with the SCA. DAR, Tab 11, DAS Past Performance Eval. Rep., at 3. As to magnitude, the PPET found that AES performed [DELETED] annual maintenance support service labor hours for the Navy, which is substantially more than the [DELETED] hours ([DELETED] percent) AES is proposed to perform on the contract here. Id. As to complexity, the PPET found that AES performed DLM work including rebuilds/overhauls, repair, and modifications for multiple types of aircraft platforms. Id. The PPET also rated AES' second reference, the follow-on contract to AES' first reference that AES is now performing as a member of a joint venture team, as very relevant based on a similar analysis. Id. at 5.

The PPET rated AVMAC's first reference, a prime contract with the Navy to provide DLM for FRC East, on the low end of very relevant. As to scope, the PPET found the reference involved essentially the same scope as the RFP for the following reasons: AVMAC is the prime contractor for the Navy effort; the effort involves a cost-reimbursable contract requiring performance at multiple locations in an ISO compliant environment; the effort requires performance of DLM functions including rebuilds/overhauls, repairs and modifications; and the contract requires compliance with the SCA. Id. at 6. As to magnitude, the PPET found that the reference involved only some of the magnitude of the RFP here. Based on annualizing the average hours performed by AVMAC from the date of award through the RFP's issuance, AVMAC will perform only [DELETED] annual maintenance support service labor hours on the Navy contract, as compared to the [DELETED] hours ([DELETED] percent) AVMAC is proposed to perform here. Id. at 6-7. As to complexity, the PPET found the reference involves essentially the same complexity as here because AVMAC performed DLM work including rebuilds/overhauls, repair, and modifications for multiple type aircraft platforms. Id. at 7. On balance, the PPET found that the reference was very relevant, even though the evaluated magnitude was not essentially the same as the RFP here. The PPET found the Navy effort addressed all parts of the RFP's DLM scope of effort and complexity in terms of the covered aircraft and components. The PPET also found that the calculated labor hour magnitude was "noteworthy and germane enough to have



involved the offeror with the similar type [of] effort required to manage the number of full-time equivalents on the instant procurement.” Id.

The PPET rated AVMAC’s second reference, a contract AVMAC performs as part of a joint venture to provide O-level maintenance and limited DLM for Marine Corps aircraft, as somewhat relevant. As to scope, the PPET concluded that the reference contains only some of the RFP’s scope because the Marine Corps effort includes only minimal DLM work. The PPET found that the primary purpose of the Marine Corps effort is O-level maintenance, and AVMAC only performs large-scale aircraft rebuilds on aircraft that are heavily cannibalized, which, in the view of the PPET “is not inherently depot level maintenance.” Id. at 9. On the other hand, the PPET noted that the degree to which an aircraft must be re-assembled may constitute heavy maintenance akin to DLM. Id. The PPET also noted that, unlike the RFP here, the reference involves a fixed-price contract. Id. The PPET acknowledged that the reference’s magnitude and complexity in terms of the number of hours performing maintenance services on multiple aircraft components was similar, but the absence of relevant DLM work or the complexity of managing a cost-reimbursable contract limited the reference’s relevance. Id. As to magnitude, the PPET found that the reference included only some of the magnitude of the RFP because the reference was not primarily for DLM. Id.

Tyonek submitted three past performance references, including one performed by Tyonek as a prime contractor and two performed by its principal team member, Zenetex. The first Zenetex reference was performed as a subcontractor to AES for the first DAS reference discussed above. The second Zenetex reference is ongoing and is being performed as a joint venturer with AES for the second DAS reference discussed above. TAR, Tab 11, Tyonek Past Performance Eval. Rep., at 2. The PPET rated the reference submitted by Tyonek where it performed as a prime contractor as very relevant because it is for the incumbent requirements. Id. at 2-3. In July 2018, the Navy awarded Tyonek an emergency interim contract to perform the incumbent requirements. TAR, Contracting Officer’s Statement of Fact, at 2. The PPET found that the scope and complexity of the incumbent work were essentially the same as the RFP’s requirements here. TAR, Tab 11, Tyonek Past Performance Eval. Rep., at 2. As to magnitude, the PPET found the reference involved essentially the same level of effort as the RFP because Tyonek is performing an average of [DELETED] maintenance support service labor hours a year for the Navy, as compared to the anticipated [DELETED] hours ([DELETED] percent) that Tyonek is proposed to perform on the contract here. Id. at 3-4.

As discussed above, Zenetex’s two past performance references were related to AES’ two above-discussed references. Zenetex’s first reference was as a member of the joint venture currently providing DLM services in support of the Navy’s FRC Southwest (see DAS’ second reference above), and the second reference was as AES’ subcontractor providing the previous DLM services in support of the FRC Southwest (see DAS’ first reference above). The PPET evaluated both references as very relevant based on Zenetex performing essentially the same scope and complexity as required by the RFP,

and essentially the same magnitude as its proposed workshare on the contract here. Id. at 5-7.

The SSAC adopted all of the PPET's relevancy evaluation findings, and ultimately concluded that all three offerors warranted substantial confidence ratings based on their relevant and positive past performance records. TAR/DAR, Tab 8, SSAC PAR, at 11. As to Yulista and its principal team member, the SSAC noted that each reference had been performed as a prime contract. Id. As to DAS, the SSAC noted that the joint venture itself did not have past performance, and the members' past performance had been performed either as primes or as part of other joint ventures. Id. As to Tyonek, the SSAC considered that Tyonek had a prime contract, but it was only for a short duration of approximately 4 months, and that Zenetex's references were performed as either a subcontractor or joint venture member. Id. In totality, and in consideration of the RFP's relative weighting of the relevancy factors, the SSAC concluded that each offeror had demonstrated that they have performed essentially the same scope, magnitude, and complexity the RFP requires, and demonstrated a high expectation that they would successfully perform the required efforts. Id. at 12. The SSAC did not identify any "distinguishable basis" to warrant paying a price premium, a conclusion, as discussed above, that was adopted by the SSA. Id.

#### Past Performance--Challenges

Tyonek and DAS raise a number of objections to the Navy's past performance evaluation. First, the protesters contend that the agency erred in assigning Yulista's prime contract the highest possible relevancy rating when the record does not demonstrate that the contract involves significant DLM-specific work, which is the primary type of work required by the RFP. Second, the protesters allege that the agency unreasonably evaluated the past performance of Yulista and its principal team member as warranting the highest possible relevancy ratings when neither firm demonstrated past performance involving most of the specific Naval aviation assets covered by the RFP. Third, the protesters contend that the Navy unreasonably imposed limitations on the relevancy of the protesters' respective past performance records.

The evaluation of an offeror's past performance is generally within the discretion of the contracting agency, and we will not substitute our judgment for reasonably based past performance ratings. Computer Scis. Corp. et al., B-408694.7 et al., Nov. 3, 2014, 2014 CPD ¶ 331 at 12. We will question an agency's evaluation conclusions, however, when they are unreasonable or undocumented. OSI Collection Servs., Inc., B-286597, B-286597.2, Jan. 17, 2001, 2001 CPD ¶ 18 at 6. The critical question is whether the agency conducted the evaluation fairly, reasonably, and in accordance with the solicitation's evaluation scheme. Al Raha Grp. for Tech. Servs., Inc.; Logistics Mgmt. Int'l, Inc., B-411015.2, B-411015.3, Apr. 22, 2015, 2015 CPD ¶ 134 at 5. For the reasons that follow, we agree with the protesters that the record does not adequately support the Navy's evaluation of Yulista's NASA prime contract as essentially the same in terms of scope, magnitude, and complexity as the RFP's requirements. We find no basis, however, to sustain the protesters' remaining allegations.

## Yulista's NASA Contract

The protesters challenge the very relevant rating assigned to Yulista's prime contract to provide maintenance services for NASA aircraft and components. The protesters contend that, unlike the requirements here that are exclusively for the most technically complex DLM services, Yulista's NASA contract is not primarily for DLM, but rather is primarily for O- and I-level maintenance and other ancillary services. Because Yulista's sole reference for its own past performance fails to show any meaningful DLM work, the protesters argue that the Navy unreasonably evaluated Yulista's NASA contract as demonstrating essentially the same scope, magnitude, and complexity of the RFP.

The Navy argues that it reasonably evaluated the scope, magnitude, and complexity of Yulista's NASA contract as warranting a very relevant rating. Relying on Yulista's explanation of its performance, the Navy maintains that the awardee provides the full scope of DLM functions required by the RFP. The Navy also asserts that the protester's arguments are based on an erroneous reading of the RFP. According to the Navy, the RFP's relevancy evaluation did not require the Navy to assess what percentage of Yulista's NASA contract was for DLM-specific work. With respect to magnitude, the Navy explains that it intentionally utilized the concept of "maintenance support service labor hours," as opposed to DLM-specific hours, because it wanted to assess an offeror's demonstrated past performance in managing a large maintenance contract, as opposed to DLM-specific functions only. See, e.g., TAR, FRC Southeast Program Manager Decl., at 1-2. The Navy's position, however, is inconsistent with its contemporaneous evaluation of relevancy.

As an initial matter, we agree with the protesters that the record does not demonstrate the extent of Yulista's DLM-specific work on its NASA contract. For example, Tyonek's initial protest alleged that the NASA contract's SOW includes O- and I-level maintenance, among other ancillary services, while the portion of work attributable to DLM appears to be small. In this regard, the only section of the SOW that explicitly addresses DLM functions is section 7.5.2, T-38 Depot Maintenance. This section of the SOW states that the contractor shall: "Perform T-38 depot level work at the El Paso forward operating location." TAR, Tab 22.3(b), NASA Contract SOW, at C-59. Tyonek showed that the solicitation for the NASA contract provided a government resource estimate for the El Paso location of 52,080 hours per year. RFP No. NNJ16556087RA at L-30. Tyonek alleged that this anticipated level of DLM work is not commensurate with the RFP's more than 640,000 annual DLM support hours.

The Navy responds that Yulista's proposal explained that it performed more extensive DLM work on the NASA contract beyond the requirements of section 7.5.2. For example, Yulista's proposal states it "performs repair and overhaul of Electrical Systems, COM/NAV Systems, Pneudraulic Systems, Sheet Metal systems that include heat treating, wheel and tire service, and repair, along with various manufacturing and machining operations, [non-destructive inspection] testing, overhauling and testing of J-85 Engines in support of Repairable Parts Center production requirements." TAR,

Tab 18.1(h), Yulista Final Past Performance Proposal, at 7.<sup>8</sup> The proposal also states that Yulista “performed over 141 engine related [work requests] last year. These activities varied from full engine overhauls, to repair and rebuilding of engine related systems such as Engine Control systems, Fuel Control Systems, and various troubleshooting initiatives.” Id. at 10-11. Based on these statements, the Navy argues that the evaluators reasonably concluded that Yulista performed very relevant work as compared to the DLM functions as required by the RFP.

The protesters respond that the generalized statements in Yulista’s proposal did not provide a basis to know how much of the work was DLM versus other levels of maintenance. For example, Yulista’s proposal asserts that it had completed 698 “on wing” work requests and 1,153 “off wing” work requests during the period of March 1 through December 1, 2018. Id. at 8. Tyonek argues that, pursuant to the applicable NASA Maintenance Manual, the terms “on wing” and “off wing” are closely related to “on-equipment” and “off-equipment” maintenance included in the Manual’s definition of O- and I-level maintenance. The Manual, in relevant part, provides that O-level tasks include, among other tasks, “inspections, handling on-equipment corrective and preventative maintenance,” and I-level maintenance “consists of on- and off-equipment material support.” TAR, Tab 22.3(d), NASA Maintenance Manual, at 21-22 (emphasis added).

Similarly, as to the 141 engine related work requests cited in Yulista’s proposal, Tyonek argues that the descriptions are vague in terms of deciphering how many involved overhaul or repair (which would be DLM) versus lesser repairs or troubleshooting (which would be O- or I-level maintenance). The protester argues that even if all 141 work requests required DLM, that would still be less than 8 percent of the total work requests performed by Yulista (141 of 1,851).

The Navy did not rebut the specific concerns identified by the protesters with respect to the scope and complexity of Yulista’s NASA contract, but again pointed to the general statements contained in Yulista’s proposal.<sup>9</sup> As the protesters effectively concede,

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<sup>8</sup> Yulista cites to section 9.3.4, Repairable Parts Center, of the NASA contract’s SOW. That section, which is located under the “Property Control” section of the “Logistics” task, does not include specific maintenance responsibilities. Rather, it specifies that Yulista is responsible for: tracking repairable assets; maintaining a maintenance tracking system; and verifying document and serial numbers. AR, Tab 22.3(b), NASA Contract SOW, at C-75. The SOW does not otherwise specify the scope of Yulista’s responsibilities with respect to the “repairable parts center,” but, ostensibly, Yulista provides these services in accordance with other provisions in the Maintenance section of the SOW, for example, under section 7.3.2, Support Shop Services. Id. at C-56.

<sup>9</sup> Yulista’s comments and supplemental comments did not provide any substantive response to the protests, but merely “concur[red] with and incorporate[d]” the Navy’s positions. See, e.g., Yulista Comments in Response to the TAR at 1; Yulista Comments in Response to the Supp. TAR at 1.

there is little doubt that at least some portion of Yulista's NASA contract pertains to DLM-specific functions. But, in light of the specific concerns raised by the protesters, the absence of meaningful rebuttal from the agency or intervenor, the limited information in Yulista's proposal and the Navy's evaluation thereof, the record simply fails to demonstrate the amount of DLM-specific work Yulista performed under the NASA contract.

The failure to meaningfully demonstrate the level of DLM-specific work Yulista performed on its NASA contract was significant because the RFP's requirements are for the most technically complex DLM tier of maintenance services. In light of the significance of DLM functions, as expressly addressed in the RFP's scope and complexity definitions, it was unreasonable for the agency to evaluate relevance without considering the level of DLM-specific work that was performed on the reference.

Tellingly, the contemporaneous evaluation record reflects that the agency in fact considered the level of DLM work in its evaluation of relevance. For example, as to AVMAC's second reference, the record reflects that the Navy found the reference to be only somewhat relevant because the contract was primarily for O-level maintenance, with only a small portion of the work involving heavy maintenance akin to DLM. The agency found that for each of the three elements, scope, magnitude, and complexity, the reference included only some of the RFP's requirements because the primary purpose of the contract was for O-level maintenance and included only limited DLM work. With respect to magnitude in particular, although the reference's total maintenance hours were 4 percent greater than AVMAC's proposed workshare, the agency concluded that the contract involved only some of the magnitude of the RFP because the maintenance hours were primarily for O-level maintenance. DAR, Tab 11, DAS Past Performance Eval. Rep., at 9 ("If the PP record was for DLM, the magnitude could be considered to contain essentially the same magnitude of the instant procurement.") (emphasis added).<sup>10</sup>

Thus, the contemporaneous record shows that the Navy considered the extent of DLM-specific work when evaluating the relevance of past performance references, including pursuing further clarification from offerors during discussions when their proposals did not adequately delineate the extent of DLM-specific work for a reference. Similar to the foregoing examples, Yulista's proposal did not specifically segregate DLM-specific

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<sup>10</sup> Similarly, for one of Y-Tech's references, the Navy expressly considered DLM-specific work in its magnitude evaluation. The Navy asked Y-Tech to clarify how much of the work was DLM-specific; the Navy specifically represented that the "required clarification impacts the evaluation in that the government is unable to ascertain the average annual maintenance support service labor hours in which the principal team member performed DLM services." AR, Tab 20.1(f), Evaluation Notice to Yulista, at 2 (emphasis added). The Navy ultimately used the DLM-specific hours identified by Y-Tech in the final magnitude evaluation, not the total hours inclusive of other maintenance hours. TAR, Tab 10, Yulista Past Performance Eval. Rep., at 6.

hours from hours performed on non-DLM functions. Unlike those examples, however, the Navy credited Yulista for the entirety of the maintenance service hours claimed without consideration of how many of those hours were actually for DLM work. In the absence of any reasonable explanation addressing the apparent inconsistent consideration regarding the amount of DLM-specific work for Yulista's NASA contract, we cannot conclude that the Navy's evaluation was reasonable.

### Navy Aircraft

The protesters next challenge the Navy's assessment that Yulista and Y-Tech's past performance was very relevant on the basis that neither the awardee nor its principal team member have direct experience with most of the Navy aircraft platforms that will be supported under the RFP. The Navy counters that the RFP did not require offerors to demonstrate past performance with any specific aircraft platforms, and the agency reasonably considered the extent and breadth of an offeror's experience with applicable aircraft and engine types. We find no merit to the protesters' arguments.

The record reflects that the Navy did not require experience with any particular aircraft platforms; rather, it considered whether an offeror had experience with the general types of aircraft platforms and engine types, for example, gas turbine and jet propulsion engines or fixed-wing and rotary-wing aircraft, that it will need to maintain under the resulting contract. As reflected in the evaluation summaries above, past performance references that demonstrated a greater breadth in terms of supporting more engine and aircraft types were assessed as being more relevant. We find no basis to object to the agency's use of engine and aircraft types, rather than specific aircraft platforms, as a basis to evaluate relevancy. Indeed, the Navy's evaluation approach is consistent with the fact that the list of aircraft platforms included in the statement of work was non-exclusive. RFP, SOW, at 12 (identifying applicable aircraft platforms as including, but not being limited to, the enumerated list).

### Protesters' Past Performance

Tyonek and DAS also challenge the assessed relevancy findings with respect to their past performance records. Specifically, Tyonek argues that the Navy unreasonably discounted the relevance of its incumbent performance due to the fact that Tyonek has only performed the incumbent work for approximately 100 days. DAS argues that the agency unreasonably discounted its team's past performance because the work was not performed by the joint venture, but, rather, was performed by the individual joint venture members. DAS alleges that this evaluation approach is contrary to SBA's applicable regulations. We find no merit to either of these arguments.

First, we do not find objectionable the Navy's consideration of the relatively short duration of Tyonek's past performance of the incumbent requirements on a recently awarded emergency interim sole-source contract. As an initial matter, Tyonek's exhortations that its incumbency warranted special consideration above all other past performance fails to advance a basis on which to sustain the protest. As we have

explained, a protester's apparent belief that its incumbency status entitled it to higher ratings or dispositive consideration provides no basis for finding an evaluation unreasonable. NLT Mgmt. Servs., LLC--Costs, B-415936.7, Mar. 15, 2019, 2019 CPD ¶ 122 at 6; PricewaterhouseCoopers Public Sector, LLP, B-415504, B-415504.2, Jan. 18, 2018, 2018 CPD ¶ 35 at 7.

Further, we have found it reasonable for an agency to consider the length or duration of an offeror's prior contracts when evaluating the relevance of such efforts. See, e.g., Nova Techs., B-403461.3, B-403461.4, Feb. 28, 2011, 2011 CPD ¶ 51 at 4; Chenega Tech. Prods., LLC, B-295451.5, June 22, 2005, 2005 CPD ¶ 123 at 6; SWR, Inc--Protest & Costs, B-294266.2 et al., Apr. 22, 2005, 2005 CPD ¶ 94 at 6. We have recognized that in evaluating an offeror's likelihood of successful performance, a prior contract effort that is of brief or limited duration is simply not as probative of an offeror's record as a contract for a lengthier period of time. Chenega Tech. Prods., LLC, supra. This general principle that an agency reasonably can consider duration as part of its relevancy determination is further buttressed by the plain terms of the RFP, which explicitly provide that the Navy would consider, as part of its relevancy evaluation, "the length of time the effort was performed." RFP at 65; see also RFP, amendment No. 1, at 7 (amending the RFP to include consideration of a past performance reference's duration in response to a question expressing concern that Tyonek would receive an unfair evaluation preference as a result of receiving the non-competitively awarded emergency interim incumbent services contract).

As to DAS' arguments that the agency's evaluation unreasonably focused on DAS' lack of relevant past performance as a joint venture, and thus unreasonably failed to credit DAS for the past performance of its members in contravention of SBA regulations, these arguments constitute untimely challenges to the RFP's express terms.

As addressed above, the initial RFP provided that the Navy would not evaluate the past performance of joint venture owners or members. In response to AVMAC's pre-award protest challenging this provision, the Navy amended the RFP to consider the past performance of a "principal team member" (i.e., those entities proposed to perform at least 30 percent of the requirement), which definition included a "joint venture owner (joint venturer)." RFP at 54, 64. The RFP also expressly put offerors on notice that "past performance effort of a principal team member generally will not be considered as significant as past performance effort of the prime offeror." Id. at 65. Thus, the Navy's decision to give lesser weight to the past performance of the DAS joint venture members was entirely consistent with the RFP's unambiguous terms. DAS' post-award objections, therefore, are untimely challenges to the RFP's disclosed ground rules.

Protests based upon alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated into the solicitation must be protested not later than the next closing time for receipt of proposals following the incorporation. 4 C.F.R. § 21.2(a)(1). An argument that solicitation language violates applicable regulations is a challenge to the terms of the solicitation and is, thus, untimely raised after award. See, e.g., MacAulay-Brown, Inc., B-417159, Mar. 13, 2019, 2019 CPD ¶ 108 at 6; Choctaw

Staffing Solutions, Inc., B-412152.3, Aug. 24, 2016, 2016 CPD ¶ 228 at 5; Wood Cuts, B-403960.3, May 19, 2011, 2011 CPD ¶ 105 at 4 n.3. Also, a protest allegation that challenges the ground rules the agency has announced for performing corrective action and recompetition is analogous to a challenge to the terms of the solicitation, and must be filed prior to the deadline for submitting new or revised proposals. See, e.g., CredoGov, B-414389.38, May 31, 2019, 2019 CPD ¶ 206 at 3; Quotient, Inc., B-416473.4, B-416473.5, Mar. 12, 2019, 2019 CPD ¶ 106 at 7; Domain Name Alliance Registry, B-310803.2, Aug. 18, 2008, 2008 CPD ¶ 168 at 4.

In sum, we find no basis to question the reasonableness of the general framework of the Navy's consideration and weighting of the significance of relevant past performance based on the RFP's express factors. We similarly find no basis to object to the Navy broadly considering past performance on the general categories of aircraft and equipment to be serviced, as opposed to reserving the highest ratings only for experience servicing specific Naval aviation platforms. We do, however, find that the Navy's evaluation of Yulista's NASA contract is not adequately addressed in the record and is inconsistent with the agency's evaluation of other past performance references. On the record presented, we cannot conclude that the agency's evaluation was reasonable, and therefore sustain the protest on this basis.

#### Cost Realism

Tyonek argues that the Navy's cost realism evaluation was unreasonable in three respects. First, Tyonek asserts that the Navy unreasonably rejected Tyonek's principal team member's proposed use of rates from a submitted, but not-yet-approved, forward pricing rate proposal (FPRP), thus making an unreasonable upward most probable cost adjustment to Tyonek's proposal. The protester contends that the Navy should have accepted Zenetex's proposed FPRP G&A rates, which were reasonably predicated on anticipated company growth. Second, Tyonek alleges that the agency engaged in disparate treatment when it accepted Yulista's proposed G&A rates that were similarly based on anticipated growth. Third, Tyonek argues that the agency failed to reasonably evaluate the realism of Yulista's proposed on-site overhead rates. For the reasons that follow, we deny the protester's first two grounds of protest, but sustain the third ground.

As to the first argument that the agency unreasonably rejected Zenetex's proposed G&A rates and instead adopted the rate from Zenetex's most recent provisional billing rate (PBR), the record reflects that Zenetex's initial proposal did not substantiate the basis for the proposed rates, and the Navy reasonably, but unsuccessfully, sought to elicit the missing substantiating information through discussions.<sup>11</sup> An offeror that does not adequately respond to an agency's request for additional information during discussions risks having its proposal downgraded or rejected as technically

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<sup>11</sup> PBRs are used for interim reimbursement purposes until settlement is reached on final indirect cost rates at the end of the contractor's fiscal year. DCAA Contract Audit Manual (CAM), § 6.705.1(a).



unacceptable, especially where, as here, the offeror had multiple opportunities to address the same agency concern. Knoll, Inc.; Steelcase, Inc., B-294986.3, B-294986.4, Mar. 18, 2005, 2005 CPD ¶ 63 at 7; Poly-Pacific Techs., Inc., B-293925.2, Dec. 20, 2004, 2004 CPD ¶ 250 at 4.

The RFP required offerors to provide, and the Navy to evaluate, a DCAA Provisional Billing Rate Approval Letter, FPRA, FPRR, or other information necessary to substantiate proposed rates. RFP at 60, 67. Zenetex proposed the rates from its fiscal years 2017-2021 FPRP. Zenetex's rate proposal to DCAA (included with Zenetex's proposal in response to the RFP) included a brief cover letter and a chart with the proposed rates; the rate proposal otherwise did not include any substantiating information explaining or justifying the proposed rates. TAR, Tab 32.2(d), Zenetex FPRA Proposal, at 1-2.

During discussions, the Navy sought clarification regarding whether the rates had been approved by DCAA. Zenetex confirmed that the rates had not yet been approved. TAR, Tab 28.1(f), Zenetex Evaluation Notice Response, at 2. In another evaluation notice, the Navy notified Zenetex that the agency intended to use the G&A rate from Zenetex's most recent PBR for the most probable cost analysis, and that "[a]dditional documentation and rationale would be required to justify the rates proposed by Zenetex." TAR, Tab 28.4(b), Zenetex Evaluation Notice Response, at 3. Zenetex objected to the use of its PBR, arguing that PBRs are generally not to be used for cost proposal purposes. Zenetex also argued that it experienced an increase in annual revenue from 2017 to 2018, and anticipated the same growth in the future as the basis for its FPRP. The response, however, did not include supporting information showing the basis for Zenetex's anticipated growth. Zenetex also noted that its proposed rates had been accepted as realistic on a different Navy procurement. TAR, Tab 28.2(g), Zenetex Evaluation Notice Response, at 2-3.

The Navy ultimately rejected Zenetex's proposed rates because the rates had not been adequately substantiated. On this record, we find no basis to object to the Navy's evaluation where the protester's team failed to provide the substantiating information required by the RFP, or to adequately address the agency's concerns during discussions. As discussed below, both Yulista and Tyonek submitted additional supporting information about their anticipated growth to justify their proposed G&A rates. In the absence of Zenetex providing similar sufficient substantiating information, the Navy reasonably relied on objective verified rate information.<sup>12</sup>

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<sup>12</sup> Tyonek also argues that the Navy erred in using Zenetex's PBR for its realism evaluation because DCAA advises that PBRs are for billing purposes only, and contractors should not use PBRs for other applications such as cost proposals. DCAA CAM, § 6.705.1(b). After Zenetex failed to adequately support its proposed rates, however, we find that the agency reasonably used the PBR as an alternative. See, e.g., Oasis Sys., LLC; Quantech Servs., Inc., B-408227.10 et al., Apr. 28, 2016, 2016 CPD ¶ 124, at 8 (denying protests challenging upward adjustments using the protesters'

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Tyonek next complains that the Navy engaged in disparate treatment when it accepted Yulista's G&A rates that were based on anticipated growth. Where a protester alleges disparate treatment, it must show that the differences in ratings did not stem from differences between the offerors' proposals. INDUS Tech., Inc., B-411702 et al., Sept. 29, 2015, 2015 CPD ¶ 304 at 6. The differing evaluation findings here were the result of material differences in the information that both parties presented.

As discussed above, Zenetex asserted, without explanation, that it anticipated year-over-year growth. The Navy ultimately rejected this unsubstantiated assertion. In contrast, when the Navy similarly notified Yulista during discussions that the agency intended to reject Yulista's proposed G&A rates for lack of adequate substantiation and instead would adopt its most recent PBR, Yulista provided detailed information to justify its growth forecast. See TAR, Tab 27.1(g), Yulista Discussion Response, at 3-4 (providing specific information regarding changes to Yulista's G&A base, including newly awarded contracts and scope, contract extensions, and forecasted retention of incumbent prime and subcontracts). On this record, there is simply no basis to find that the Navy engaged in disparate treatment where the different evaluation results were the result of differences in the quality of information provided by the offerors. See, e.g., TrailBlazer Health Enters., LLC, B-406175, B-406175.2, Mar. 1, 2012, 2012 CPD ¶ 78 at 9 (denying challenge to agency's cost realism analysis where the difference in cost realism adjustments to the offerors' proposals was not the result of unequal treatment by the agency, but resulted from the agency's recognition of differences with respect to the offerors' substantiation of their proposed approaches).<sup>13</sup>

Lastly, Tyonek argues that the agency failed to reasonably evaluate the realism of Yulista's and Y-Tech's proposed overhead rates. The protester contends that the Navy unreasonably accepted the proposed rates without assessing whether the rates reflect the most probable cost of performance. Tyonek alleges that the proposed rates are

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PBRs because an agency may reasonably adjust offerors' proposed rates where the offerors fail to provide adequate detail to support their rates, and where the agency relies on reasonable sources of data to support its adjustments). We are also not persuaded that the Navy had to accept Zenetex's representation that its proposed rates had been accepted on a prior procurement. An agency's acceptance of rates proposed in prior procurements is not dispositive on subsequent realism evaluations, as each procurement stands on its own, and an evaluation of an offeror's proposal under a different procurement is irrelevant to determining the reasonableness of the evaluation under other procurements. Id. at 9 n.11.

<sup>13</sup> We also note that when the Navy asked for additional substantiation for Tyonek's proposed G&A rates, Tyonek provided similar substantiating information as Yulista submitted to support its rates. TAR, Tab 28.1(l), Tyonek Evaluation Notice Response, at 3-4. The Navy similarly accepted Tyonek's substantiating information to justify rates less than Tyonek's most recent PBR.

below the offerors' historical proposed rates, and below the rates that Tyonek and its principal team member are incurring for the incumbent work. The Navy argues that its realism evaluation was reasonable, and it was not required to conduct an in-depth analysis of each element of Yulista's cost proposal. For the reasons that follow, the record does not demonstrate that the agency's realism evaluation was reasonable.

When an agency evaluates a proposal for the award of a cost-reimbursement contract, an offeror's proposed costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. FAR §§ 15.305(a)(1), 15.404-1(d); TriCenturion, Inc.; SafeGuard Servs., LLC, B-406032 et al., Jan. 25, 2012, 2012 CPD ¶ 52 at 6. Consequently, an agency must perform a cost realism analysis to determine the extent to which an offeror's proposed costs are realistic for the work to be performed. FAR § 15.404-1(d)(1). An agency is not required to conduct an in-depth cost analysis, see id., or to verify each and every item in assessing cost realism; rather, the evaluation requires the exercise of informed judgment by the contracting agency. AdvanceMed Corp.; TrustSolutions, LLC, B-404910.4 et al., Jan. 17, 2012, 2012 CPD ¶ 25 at 13. While an agency's cost realism analysis need not achieve scientific certainty, the methodology employed must be reasonably adequate and provide some measure of confidence that the rates proposed are reasonable and realistic in view of other cost information reasonably available to the agency at the time of its evaluation. Tantus Techs., Inc., B-411608, B-411608.3, Sept. 14, 2015, 2015 CPD ¶ 299 at 10. Our review of an agency's cost realism evaluation is limited to determining whether the cost analysis is reasonably based and not arbitrary. TriCenturion, Inc.; SafeGuard Servs., LLC, supra.

Here, the record does not demonstrate that the Navy independently assessed the realism of Yulista's proposed overhead rates, or those of its subcontractor Y-Tech. Unlike the proposed G&A and other indirect rates, where the record demonstrates that the agency engaged in discussions and independently assessed and documented the basis for the proposed rates, the record is devoid of any meaningful analysis of the realism of Yulista's proposed overhead rates. Rather, the record suggests that the Navy accepted the proposed overhead rates without critically reviewing them.

As to its proposed onsite overhead rates, Yulista (and Y-Tech) represented that it would establish a new project-specific overhead pool specifically for the contract here. Yulista represented that it used its historical rates as the basis for its proposed rates. TAR, Tab 27.5(h), Yulista Revised Cost Proposal (Apr. 24, 2019), at 8. The record, however, does not demonstrate a reasonable nexus between Yulista's historical rates and its proposed rates. For example, the record reflects that on Yulista's "very relevant" NASA contract, its actual on-site overhead rate is significantly higher than its proposed on-site overhead rates for this contract; indeed, there appears to be an almost [DELETED]-fold difference between the actual overhead rate incurred on the NASA contract versus the rates proposed here. Compare TAR, Tab 24.2, Cost Eval. Rep., at 51 (showing 2018 actual on-site NASA contract overhead rate of approximately [DELETED] percent) with

id. at 49 (showing average proposed on-site overhead rate of approximately [DELETED] percent for this contract).<sup>14</sup> Thus, the record demonstrates that Yulista's proposed rates differed significantly from its historical rates, and Yulista failed to reasonably explain the basis for the wide variance.

The evaluators recognized the inherent limitations of Yulista's historical overhead rate data in analyzing the realism of the overhead rates proposed for this contract. Rather than seek an alternative means to evaluate the realism of the proposed rates or to investigate further the bases for the significant variances between the proposed and historical rates, however, the cost evaluators simply accepted the proposed rates, noting that the rates presented cost risk to the government. The cost report states that:

Since the offeror's fringe and [overhead] rates are calculated on an individual contract basis and there are significant variances with the historical fringe and [overhead] rates from the offeror's other contracts, no comparison could be made to the offeror's historical rate information. In the absence of other viable comparable data, the [cost evaluation team] had to utilize the prime and subcontractor's proposed fringe and [overhead rates]. Accordingly, risk exists as to the validity of the proposed fringe and [overhead rates], in comparison to the total proposed cost.

TAR, Tab 24.2, Cost Eval. Rep., at 58 (emphasis in original).

While recognizing the limitations on the applicability of historical rate information to the realism evaluation of this proposal, the Navy's acceptance of the proposed overhead rates without making any realism assessment was not reasonable. See, e.g., TriCenturion, Inc.; SafeGuard Servs., LLC, supra (sustaining protest where the record failed to include sufficient information demonstrating how the agency determined proposed rates were realistic); E.L. Hamm & Assocs., Inc., B-280766.3, Apr. 12, 1999, 99-1 CPD ¶ 85 (same). Absent some reasonable methodology for assessing the realism of the proposed overhead rates, we find the Navy's acceptance of the proposed rates, without any additional documented analysis, to be inadequate.

In this regard, an agency cannot simply accept cost risk instead of making some effort to determine whether proposed rates are realistic and reasonably reflect the most probable cost of performance to the government. FAR § 15.404-1(d)(1). Such an approach would vitiate the need for the government to conduct a most probable cost analysis. Even assuming, however, that such an approach could be justified here, the record is devoid of any evidence that the significant potential cost risk to the

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<sup>14</sup> It also bears noting that Yulista's average proposed consolidated on-site overhead and fringe rate of [DELETED] percent for this contract is significantly below both its reported actual ([DELETED] percent) and 2019 proposed PBR ([DELETED] percent) rates for the NASA contract. TAR, Tab 27.5(h), Yulista Revised Cost Proposal (Apr. 24, 2019), at 5 (incorporating PBR proposal letter to DCAA).

government was considered by the SSAC in its award recommendation, or the SSA in his tradeoff analysis. On this record, we cannot conclude that the agency's evaluation was reasonable, and therefore sustain Tyonek's protest on this basis.

## RECOMMENDATION

In summary, we find that the Navy's evaluation of the relevancy of Yulista's past performance was not adequately documented and was inconsistent with the standards contemporaneously applied to the protesters' past performance references. We also find that the Navy's cost realism evaluation of Yulista's proposed overhead rates was inadequate. We recommend that the Navy, consistent with our decision, reevaluate the relevance of Yulista's past performance, and Yulista's proposed overhead rates. Based on the reevaluation, we recommend that the agency make a new source selection determination. We also recommend that the agency reimburse the protesters their respective costs associated with filing and pursuing their protests, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d). The protesters' respective certified claims for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after the receipt of this decision. Id. at (f).

The protests are sustained in part and denied in part.

Thomas H. Armstrong  
General Counsel