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Decision

Matter of: Public Properties, LLC

File: B-419414; B-419414.2

Date: February 9, 2021

Robert C. MacKichan Jr., Esq., Gordon Griffin, Esq., Hillary J. Freund, Esq., and Adam T. Adcock, Esq., Holland & Knight LLP, for the protester.
Jordan K. Baker, Esq., General Services Administration, for the agency.
Heather Self, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the agency unreasonably evaluated awardee's proposal as technically acceptable is sustained because the contemporaneous record does not show that, prior to award, the agency assessed the impacts that could result from a portion of the awardee's property lying within a 100-year floodplain.
 2. Protest that the agency failed to document adequately its technical evaluation is sustained because the record is devoid of any assessment of whether offerors' proposals met numerous solicitation requirements.
 3. Protest that the agency performed improper present value price evaluation is denied where the agency's analysis was reasonable and consistent with the terms of the solicitation.
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DECISION

Public Properties, LLC, of Washington, D.C., protests the award of a lease for office space to PPMC Ltd., of Carson City, Nevada, by the General Services Administration (GSA), under request for lease proposals (RLP) No. 7NV2126. The protester argues that the awardee should have been evaluated as technically unacceptable, and further challenges the agency's price evaluation.

We sustain the protest.

BACKGROUND

The RLP, issued on January 10, 2020, provided for the award of a fully-serviced

20-year lease of office space in the Carson City, Nevada metropolitan area.¹ Agency Report (AR), exh. 1, Lease Contracting Officer's Statement (COS) at ¶ 5; AR, exh. 2, RLP at 4, 6. GSA sought to lease a minimum of 27,237 to a maximum of 28,599 American National Standards Institute/Building Owners and Managers Associate Office Area square feet (ABOA SF) of contiguous space and 75 exterior parking spaces for use by two tenant agencies--components of the United States Geological Survey and the United States Department of Agriculture.² RLP at 4, 68, 110. The solicitation advised that the lease would be awarded to the offeror that submitted the lowest-priced, technically acceptable proposal. *Id.* at 21.

The agency received offers from Public Properties, PMMC, and a third firm that later withdrew its offer. AR, exh. 14, Award Summary at 2, 4. The agency conducted discussions with Public Properties and PMMC, following which the firms submitted final proposal revisions (FPRs). *Id.* at 2-6; AR, exh. 4, Awardee Discussions; exh. 12, Protester Discussions. The agency evaluated Public Properties' proposed lease rate as \$21.45 per ABOA SF and PMMC's proposed lease rate as \$16.67 per ABOA SF. AR, exh. 14, Award Summary at 6. The agency also concluded that both offerors submitted technically acceptable proposals. *Id.* at 4, 6. Based on its evaluation, the agency selected for award PMMC's lowest-priced, technically acceptable proposal, at a rental cost of \$14,801,085.75 for the full 20-year term of the lease. *Id.* at 6-7; exh. 3, Awarded Lease at 5. On October 22 and 23, respectively, PMMC and the agency executed the lease contract. AR, exh. 3, Awarded Lease at 1. Following receipt of an unsuccessful offeror notice and debriefing, Public Properties filed this protest with our Office. See AR, exh. 7, Unsuccessful Offeror Letter; exh. 8, Request for Debriefing; exh. 9, Debriefing.

DISCUSSION

The protester contends that the agency should have found the awardee technically unacceptable or ineligible because the firm's offered property lies within a 100-year floodplain. The protester also argues that the agency failed to document adequately its technical evaluation of proposals. In addition, the protester challenges the agency's price evaluation, arguing that it did not follow the methodology set forth in the solicitation, that the awardee submitted an incomplete or incorrect price proposal making evaluation impossible, and that the agency failed to document adequately its calculation of replication and relocation costs. For the reasons discussed below, we

¹ The RLP provided that the term of the lease was 20 years, with government termination rights effective after a 10-year firm term of the lease. RLP at 4.

² ABOA SF refers to the area available for use by a tenant for personnel, furnishings, and equipment, and is generally synonymous with usable square feet. *The Metropolitan Square Assocs., LLC*, B-409904, Sept. 10, 2014, 2014 CPD ¶ 272 at 2 n.2; see also RLP at 35.

sustain the protester's challenge to the agency's technical evaluation of proposals and we deny the protester's challenge to the agency's price evaluation.³

Technical Evaluation

In reviewing an agency's evaluation of proposals and source selection decision, it is not our role to reevaluate submissions; rather, we examine the supporting record to determine whether the decision was reasonable, consistent with the stated evaluation criteria, and adequately documented. *Federal Builders, LLC--The James R. Belk Trust*, B-409952, B-409952.2, Sept. 26, 2014, 2014, CPD ¶ 285 at 3. While we will not substitute our judgment for that of the agency, we will question the agency's conclusions when they are inconsistent with the solicitation criteria and applicable procurement statutes and regulations, undocumented, or not reasonably based. *Poplar Point RBBR, LLC*, B-417006.2, B-417006.3, Sept. 3, 2019, 2019 CPD ¶ 301 at 5-6. When an agency fails to document or retain evaluation materials, it bears the risk that there may not be adequate supporting rationale in the record for us to conclude that the agency had a reasonable basis for its evaluation conclusions. *Hoover Properties*, B-418844, B-418844.2, Sept. 28, 2020, 2020 CPD ¶ 372 at 7; *Navistar Def., LLC; BAE Sys., Tactical Vehicle Sys. LP*, B-401865 et al., Dec. 14, 2009, 2009 CPD ¶ 258 at 13.

Our Office will not limit its review of an agency's evaluation to contemporaneously documented evidence, but instead will consider all the information provided, including a party's arguments and explanations. *Hoover Properties, supra* at 7; *CRAssociates, Inc.*, B-418194, Jan. 23, 2020, 2020 CPD ¶ 80 at 5. Post-protest explanations that provide a detailed rationale for contemporaneous conclusions, and simply fill in previously unrecorded details generally will be considered in our review so long as those explanations are credible and consistent with the contemporaneous record. When, however, an agency's post-protest defense of its evaluation is not supported by the contemporaneous record, or is inconsistent with the record, such explanations are unpersuasive and will be afforded little weight. *Hoover Properties, supra* at 7; *Avionic Instruments LLC*, B-418604, B-418604.2, June 30, 2020, 2020 CPD ¶ 225 at 6; *Boeing Sikorsky Aircraft Support*, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15.

Floodplain Determination

The protester argues that the agency improperly made award to PMMC because its property lies within a 100-year floodplain and the solicitation prohibited award to such a property if there was a practical alternative available--such as the property offered by the protester. Protest at 6; Comments & Supp. Protest at 4. Relying on a prior decision of our Office, the agency contends that it reasonably determined that the awardee's proposal was technically acceptable because the contract is for the lease of building

³ Although we do not address every issue raised by the protester, we have reviewed each issue and find that with the exception of those discussed in this decision, none provides a basis to sustain the protest.

space and parking spaces, which are not in a 100-year floodplain, and the portion of the larger land parcel that is within a 100-year floodplain is not needed for the government's use of or access to the premises. Memorandum of Law (MOL) at 3-4, *citing Ronald W. Brown*, B-292646, Sept. 30, 2003, 2003 CPD ¶ 170. While the agency may be correct that it reasonably could have evaluated the awardee's proposal as technically acceptable based on such a determination, the agency's contention that it did, in fact, make such a determination before award is not supported by the record.⁴

As relevant here, the solicitation provided that:

A Lease will not be awarded for any offered Property located within a 100-year floodplain unless the Government has determined that there is no practicable alternative. An Offeror may offer less than its entire site in order to exclude a portion of the site that falls within a floodplain, so long as the portion offered meets all the requirements of this RLP and does not impact the Government's full use and enjoyment of the Premises. If an Offeror intends that the offered Property that will become the Premises for purposes of this Lease will be something other than the entire site as recorded in tax or other property records the Offeror shall clearly demarcate the offered Property on its site plan/map submissions and shall propose an adjustment to property taxes on an appropriate pro rata basis. For such an offer, the LCO [lease contracting officer] may, in his or her sole discretion, determine that the offered Property does not adequately avoid development in a 100-year floodplain.

RLP at 9.

In its report to our Office responding to the protest, the agency acknowledges that a "small portion" of the awardee's offered property lies within a 100-year floodplain. AR, exh. 11, aff. of National Environmental Policy Act (NEPA) Program Manager at ¶ 4. The NEPA program manager represents that, on July 1, 2020, utilizing the FEMA floodplain map, he determined that the awardee's offered property was within a 500-year

⁴ Although not defined by the parties, we understand the term floodplain to refer to "the low land and relatively flat areas of land adjoining inland and coastal waters," and to mean "basically those areas of land that flood waters will flow to first and recede from last." *Alnasco, Inc.*, B-249863, Dec. 22, 1992, 92-2 CPD ¶ 430 at 2. Based on historical studies of prior flooding and statistical analyses of terrain and water flow, the Federal Emergency Management Agency (FEMA), under the National Flood Insurance Program, prepares Flood Insurance Rate Maps that identify those areas of a community that, on the average, are likely to be flooded once every 100 years--*i.e.*, the 100-year floodplain. *Id.* Statistically, areas within a 100-year floodplain have a 1 percent chance of flooding in any given year. *Id.*; see also Floodplain Management Guidelines for Implementing Executive Order 11988, 43 Fed. Reg. 6032 (Feb. 2, 1978).

floodplain.⁵ *Id.* at ¶ 3. He also represents that, on an unspecified date, he “determined that the subject building and the ingress/egress to the property” both fell outside of the 100-year floodplain, and, as such, the small portion of the property lying within this area did “not present a risk to the Government’s Lease” and would not “affect the Government’s use and enjoyment of the premises.” *Id.* at ¶ 4.

The record confirms that, on or before July 1, 2020, which was prior to award, the NEPA program manager concluded that the awardee’s offered property lies within a 500-year floodplain. AR, exh. 5, NEPA Memo to File (NEPA Memo) at 1. The record also shows that GSA contacted at least one of the two tenant agencies to inquire whether its proposed activities might potentially be impacted by occupying space within a 500-year floodplain, and, the tenant agency responded that its activities would not be impacted. *Id.* at 6, 10. The NEPA Memo to the File, however, does not indicate that a portion of the awardee’s offered property lies within a 100-year floodplain or include any analysis of potential impacts related to a 100-year flood event. *See generally Id.*

As part of our Office’s development of the protest, we asked the agency to “provide the actual or approximate date on which the NEPA program manager conducted analysis related to the portion of the awardee’s property that lies within the 100-year floodplain.” Notice of GAO Questions for the Agency at 1. The agency responded that the NEPA program manager conducted his initial analysis of the awardee’s offered property “on or before July 1, 2020,” during which a determination was made that the property was within a 500-year floodplain. Agency Resp. to GAO Questions at 3.

The agency further provided that, on October 27, 2020, the NEPA program manager was notified of a potential challenge to the lease award, after which he “conducted an additional analysis . . . confirming [his] initial finding that the floodway and 100-year floodplain do not pose a threat to the government’s lease, personnel or property.” Agency Resp. to GAO Questions at 3-4. We also asked the agency to provide citations to the page numbers in the agency’s NEPA Memo, AR exh. 5, that reflected the NEPA program manager’s determination that the government’s use of the premises would not be impacted by the fact that a portion of the awardee’s offered property lies within a 100-year floodplain. Notice of GAO Questions for the Agency at 1. The agency responded that the NEPA program manager’s July 1, 2020 signature on the NEPA Memo to the File form implied the referenced determination. Agency Resp. to GAO Questions at 3.

We do not find persuasive the agency’s post-protest explanation that the NEPA program manager’s July 1 signature implied, or otherwise encompassed, an analysis of impacts from a 100-year flood event when the signed documented--the NEPA Memo--

⁵ Similar to a 100-year floodplain, the areas of a community that, on average, are likely to be flooded once every 500 years lie within a 500-year floodplain, and have a 0.02 percent chance of flooding in any given year. *See Floodplain Management Guidelines for Implementing Executive Order 11988*, 43 Fed. Reg. 6032 (Feb. 2, 1978).

fails to even acknowledge that a portion of the awardee's offered property lies within a 100-year floodplain, concluding instead that the property was within only a 500-year floodplain. Further, we are less inclined to be persuaded by such accounts when the NEPA program manager admits that he undertook a second floodplain analysis on October 27, after award and execution of the lease contract at issue here. See Agency Resp. to GAO Questions at 3-4. While the NEPA program manager maintains that his second analysis confirmed his initial findings related to the 100-year floodplain, we note that it is only the agency's description of the later post-award analysis, and not the pre-award analysis documentation, that makes any reference to the 100-year floodplain.

We find the record here devoid of any contemporaneous documentation to support the post-protest explanation that the agency assessed the potential impacts resulting from a portion of the awardee's offered property lying within a 100-year floodplain prior to making award, as was required by the solicitation. Accordingly, we find that the record here is insufficient for us to conclude that the agency's evaluation of the awardee's proposal as technically acceptable was reasonable, and we sustain the protest on this basis. See e.g., *Federal Buildings, LLC-The James R. Belk Trust, supra* at 5 (sustaining protest because record provided an insufficient basis for the agency's conclusion that the awardee's proposal complied with the wage requirements set forth in the solicitation); *TriCenturion, Inc.*; *SafeGuard Servs., LLC, B-406032 et al.*, Jan. 25, 2012, 2012 CPD ¶ 52 at 13 (sustaining protest because the record was inadequate to conclude that the agency's cost realism analysis was reasonable).⁶

Documentation of Technical Evaluation

⁶ The protester further contends that the awardee's proposal was rendered ineligible for award because the firm made a material misrepresentation in its offer by asserting that the offered property was "not in a flood plain." Protest at 7. An offeror's material misrepresentation in its proposal may provide a basis for disqualifying the proposal and canceling a contract award based on the proposal; a misrepresentation is material when the agency relies on it and it likely had a significant impact on the evaluation. *Public Comms. Servs., Inc.*, B-400058, B-400058.3, July 18, 2008, 2009 CPD ¶ 154 at 23.

Here, our review of the record confirms that the awardee incorrectly represented on the GSA Form 1364 included in the firm's proposal that its offered property was "not in a flood plain." AR, exh. 10, Awardee's Proposal at 675. The record also confirms, however, that the agency did not rely on the awardee's incorrect representation, and instead conducted its own evaluation of the offered property's floodplain status prior to award. As discussed above, the agency's evaluation concluded only that the awardee's offered property was situated within a 500-year, rather than a 100-year, floodplain, and failed to assess the potential impacts of a 100-year flood event. Notwithstanding this error, the agency's evaluation does not appear to have relied upon the awardee's misrepresentation that its offered property did not lie in any floodplain. Accordingly, the protester's material misrepresentation argument does not provide a separate basis to sustain the protest.

The protester also argues that the agency failed to document adequately its technical evaluation of aspects of proposals other than floodplain compliance. Comments & Supp. Protest at 12. The agency contends that its award decision was “well-documented.” Supp. AR at 8. We disagree.

Our review of the record reflects that the agency failed to document adequately its technical evaluations of proposals. In addition to the inadequate floodplain assessment discussed above, the record includes documentation related to fire and seismic safety reviews for each offered property (e.g., certificates from local building authorities, spreadsheet indicating GSA review of the certificates and other safety reports, checklists completed by the offerors and the firms’ engineers). See e.g., AR, exh. 15, Additional Price Abstract, Fire, and Seismic Safety Documents at 16, 77-80, 92-96, 100. Other than these flood, fire, and seismic safety reviews, however, the record contains virtually no contemporaneous agency evaluation of whether the offerors’ proposals met the numerous space and amenity requirements set forth in the solicitation.

For example, the solicitation required offerors to propose “contiguous space . . . on one floor,” in a building situated in “an office, research, technology, or business park that is modern in design with a campus-like atmosphere” or “on an attractively landscaped site containing one or more modern office [b]uildings that are professional and prestigious in appearance with the surrounding development well maintained and in consonance with a professional image.” RLP at 5. The solicitation also provided that “to be acceptable for award, the offered [s]pace must provide for an efficient layout as determined by the LCO.” *Id.* at 9. The solicitation further established a list of detailed requirements for various services, such as janitorial services, the selected lessor would be required to provide. *Id.* at 62. In addition, the solicitation included an agency-specific requirements package that set forth the space layout, building services, telecommunications, and other needs of the tenant agencies. *Id.* at 68-135.

For PMMC’s proposal, the record reflects that the agency concluded the lease offer included “28,599 ABOA SF (with the Common Area Factor of 1.00, 28,599 [rentable square feet] RSF) on the 1st floor of the building with 110 parking spaces,” and that the initial proposal had multiple “[m]issing or incomplete documents.” AR, exh. 14, Award Summary at 2-3. The record further provides that PMMC’s “FPR was technically acceptable,” and that “GSA verified the final offer submitted by PMMC, LTD was technically acceptable.” *Id.* at 3, 6. Similarly, for Public Properties’ proposal, the record reflects that the agency concluded the lease offer included “27,237 ABOA SF (with the Common Area Factor of 1.05, 28,716 RSF) on the 1st floor of the building with 75 parking spaces outside,” that the initial proposal had multiple “[m]issing or incomplete documents,” and that Public Properties’ “FPR was technically acceptable.” *Id.* at 5-6.

The record is wholly devoid, however, of any explanation of how or why the agency reached these conclusions, and is bereft of any assessment of whether offerors’ proposals met the above-listed, and numerous other, solicitation requirements. Based on this record, we are unable to determine whether the agency’s technical evaluation of

proposals was reasonable. Accordingly, we sustain the protest on this basis. See e.g., *Avionic Instruments LLC, supra* at 6 (sustaining protest because the record contained no contemporaneous evaluation of whether proposals satisfied the prior experience requirements in the performance work statement).

Price Evaluation

In addition to challenging the agency's technical evaluation of proposals, the protester argues that the agency's price evaluation was flawed. The protester contends that the awardee submitted an incomplete price proposal, which made a reasonable evaluation impossible. Comments & Supp. Protest at 7-9. In reviewing protests challenging the evaluation of proposals, we do not conduct a new evaluation or substitute our judgment for that of the agency; rather, we review the record to determine whether the agency's judgment was reasonable and in accordance with the solicitation's evaluation criteria. *Huffman Bldg., P, LLC, B-418752, Aug. 21, 2020, 2020 CPD ¶ 288 at 3.*

As relevant here, the solicitation provided that evaluation of offered prices would "be based on the annual price per ABOA SF, including all required option periods," and that the agency would "perform present value price evaluation by reducing the prices per ABOA SF to [a] composite annual ABOA SF price." RLP at 22. The solicitation established a specific formula to conduct this evaluation. *Id.* at 22-23. As advised in section 4.09 of the solicitation, the formula involved the agency taking an offeror's fully serviced lease rate, conducting calculations to yield a gross present-value cost, and adding certain costs to that gross present-value costs, including "[t]he cost of relocation of furniture, telecommunications, replications costs, and other move-related costs, if applicable." *Id.* at 22.

As further relevant here, the solicitation required offerors to submit their proposals, in part, by completing GSA Form 1364 (Proposal to Lease Space). RLP at 16. The solicitation required offerors to include on the Form 1364 their gross rates--i.e., the firms' fully serviced lease rates--per ABOA SF and per RSF, and to "clearly itemize[e] the total [b]uilding shell rental, TI [tenant improvement] rate, Building Specific Amortized Capital (BSAC) rate, operating costs, and parking." *Id.* at 16, 164. The solicitation described the difference between ABOA SF (or "office area") and RSF (or "rentable SF"), explaining that ABOA SF is the space a tenant uses for personnel, furniture, etc., while RSF is the space for which a tenant is charged rent, and includes not only the ABOA SF but also "may include a share of [b]uilding support/common areas such as elevator lobbies, [b]uilding corridors, and floor service areas" (e.g., restrooms, janitor rooms, electrical closets, etc.). *Id.* at 35.

The solicitation further explained that an offeror utilizes its Common Area Factor (CAF) to determine its RSF by utilizing this formula: $ABOA\ SF \times (1 + CAF) = RSF$. RLP at 35. As defined by the solicitation, an offeror's CAF is "a conversion factor determined by the [b]uilding owner and applied by the owner to the ABOA SF to determine the RSF for the leased [s]pace," which "is expressed as a percentage of the difference between the

amount of rentable SF and ABOA SF, divided by the ABOA SF.” *Id.* The solicitation required offerors to provide their CAF’s on their firms’ Form 1364s. *Id.* at 164.

The protester contends that the awardee “failed to completely and accurately fill out its GSA Form 1364,” and failed to provide both its CAF and annual rent per ABOA SF, among other things. Comments & Supp. Protest at 7. The protester maintains that, as a result of the awardee’s failure, the agency improperly utilized the awardee’s RSF rate, rather than its ABOA SF rate, in conducting its present value price evaluation, which was inconsistent with the solicitation. *Id.* at 10-11. The protester bases its argument on the fact that the awardee listed the same 28,599 square feet as both its amount of offered ABOA SF and RSF, and left blank the CAF and “Annual Rent \$ Per ABOA SF” shell, operating costs, and total rate boxes on the firm’s Form 1364. *Id.* at 8, *see also* AR, exh. 10, Awardee’s Proposal at 673.

The agency responds by pointing to the solicitation’s explanation that the CAF is determined by the building owner, and that when, as here, an offeror indicates that it has chosen a CAF of zero (which the awardee did by leaving the CAF space blank on its Form 1354) the offeror’s “RSF simply equals the ABOA SF.” Supp. AR at 4. The agency represents that “[t]here is nothing preventing a building owner from using a 0% CAF, and, in fact, it is quite common,” and indicates that the offeror is choosing not to charge additional rent for the government’s usage of a portion of the building’s common areas. *Id.* at 4, 6, 11. Accordingly, in its present value price evaluation, the agency utilized the awardee’s offered annual shell rent of \$16.70 per RSF as the firm’s annual shell rent for ABOA SF. *Id.* at 5; AR, exh. 6, Present Value Price Evaluation at 1.

As discussed above, our Office will not limit its review of an agency’s evaluation to contemporaneously documented evidence, but instead will consider all the information provided, including a party’s arguments and explanations. *Hoover Properties, supra* at 7; *CRAssociates, Inc.*, B-418194, Jan. 23, 2020, 2020 CPD ¶ 80 at 5. Generally, we will consider in our review post-protest explanations that provide a detailed rationale for contemporaneous conclusions, and simply fill in previously unrecorded details so long as those explanations are credible and consistent with the contemporaneous record. *Id.*

Based on the record as discussed above, and given the agency’s explanation that it is established agency practice to consider an offeror’s proposed ABOA SF and RSF to be equal when the offer proposes a CAF of zero, we find no basis to sustain the protester’s challenge to the agency’s present value price evaluation. Accordingly, we deny this protest allegation. *See e.g., 1400 Chapman, LLC*, B-418409 *et al.*, Apr. 15, 2020, 2020 CPD ¶ 16 at 11 (in dismissing challenge that awardee proposed “fraudulent” ABOA SF, noting as support the agency’s explanation that GSA is not in control of a building’s offered RSF, that offered CAFs “vary from building to building,” and that offered CAFs can range from as low as zero to as high as 20 percent).

The protester further contends that the agency failed to document adequately its calculation of replication and relocation costs, which, as explained above, were added to offerors’ proposed rental rates as part of the agency’s present value price calculation.

Protest at 7; Comments & Supp. Protest at 6. The agency, without directly contesting the protester's contention regarding a lack of adequate documentation, responds that "[d]espite having properly determine[d] the related relocation and replication costs, for argument's sake, GSA performed an additional [present value] [a]nalysis excluding these costs," resulting in a proposed lease rate for the awardee of \$16.67 per ABOA SF and for the protester of \$18.75 per ABOA SF. MOL at 6, see *also* AR, exh. 14, Award Summary at 6. Accordingly, the agency argues the protester was not competitively prejudiced by the lack of contemporaneous documentation of the agency's analysis of related relocation and replication costs because the awardee would remain the lowest-priced, technically acceptable offeror even if relocation and replication costs were removed from the price analysis. MOL at 6.

The record reflects that the agency based its analysis of relocation and replication costs on the estimated costs to move offices provided by one of the two tenant agencies. AR, exh. 14, Award Summary at 8. We cannot conclude that it was reasonable for the agency to base its calculations on costs that did not include both tenant agencies. We also cannot conclude, however, that this error prejudiced the protester, as correction of the error would not have resulted in the protester's evaluated price being lower than the awardee's. *Potomac Creek Assocs., L.L.C.*, B-406243.2, Nov. 26, 2013, 2013 CPD ¶ 280 at 6.

Competitive Prejudice

Competitive prejudice is an essential element of every viable protest; we will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions--that is, unless the protester demonstrates that, but for the agency's actions, it would have a substantial chance of receiving the award. *Octo Consulting Grp., Inc.*, B-413116.53, B-413116.55, May 9, 2017, 2017 CPD ¶ 139 at 10. When performing this analysis, our Office will resolve doubts regarding prejudice in favor of the protester; a reasonable possibility of prejudice is sufficient to sustain a protest. *Aluttiq-Banner Joint Venture*, B-412952 *et al.*, July 15, 2016, 2016 CPD ¶ 205 at 11.

Here, we have found that the record is inadequate for us to conclude that the agency's evaluation of the awardee's proposal as technically acceptable is reasonable. As we have no basis to conclude that the agency reasonably found the awardee's proposal technically acceptable, the protester, as the only other firm in contention for award, has met its burden of showing a reasonable possibility of prejudice.

RECOMMENDATION

The lease here has been awarded and signed by the agency and awardee, and the lease does not contain a standard termination for convenience clause. Rather, the lease permits the agency to terminate the contract only after the end of a 10-year firm term. In the absence of a termination for convenience clause, we ordinarily do not recommend termination of an awarded lease, even if we sustain the protest and find the

award improper. *Federal Builders, LLC-The James R. Belk Trust, supra* at 7. Consequently, we recommend that the protester be reimbursed its proposal preparation costs, as well as the costs of filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). The protester's certified claim for costs, detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision. *Id.* § 21.8(f)(1).

The protest is sustained.

Thomas H. Armstrong
General Counsel