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# Decision

**Matter of:** NextGen Federal Systems, LLC

**File:** B-420456; B-420456.2; B-420456.3

**Date:** April 14, 2022

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Jonathan L. Kang, Esq., and John Sorrenti, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. Challenge to the evaluation of protester's technical quotation is denied where the evaluation was reasonable and consistent with the terms of the solicitation.
  2. Challenge to the evaluation of the awardee's quoted price and professional compensation rates is denied where the agency reasonably found that awardee's labor rates were realistic, and where the protester does not establish that it was prejudiced by the evaluation of the awardee's professional compensation.
  3. Challenge to the evaluation of past performance is denied where evaluation was reasonable and consistent with the terms of the solicitation.
  4. Argument that the agency misled the protester during discussions is denied where the agency reasonably advised the protester that its quoted labor rates were too low, and where the agency provided the protester an opportunity to either raise its rates or justify them as quoted.
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## DECISION

NextGen Federal Systems, LLC, of Morgantown, West Virginia, protests the issuance of a task order to Paragon Technology Group, Inc., of Scott Air Force Base, Illinois, under request for quotations (RFQ) No. HTC71121QD010, which was issued by the

Department of Defense, United States Transportation Command (USTRANSCOM)<sup>1</sup>, for advisory and assistance services to support the agency's program executive office (PEO-T). The protester argues that the agency unreasonably evaluated quotations under the technical, price, and past performance factors, and that the agency conducted misleading discussions with the protester.

We deny the protest.

## BACKGROUND

USTRANSCOM issued the RFQ on June 3, 2021, under the Federal Supply Schedules (FSS) provisions of Federal Acquisition Regulation (FAR) subpart 8.4. The solicitation was limited to vendors<sup>2</sup> who hold FSS contracts for category 54151S, and sought quotations to provide management, engineering, configuration management, and acquisition related support for the agency's PEO-T. Agency Report (AR), Tab 26, RFQ amend. 3 at 1;<sup>3</sup> Tab 16, Performance Work Statement (PWS) at 1. The contractor will be required to provide support for the following six task areas: (1) USTRANSCOM systems and functional support services within the PEO-T; (2) engineering support; (3) configuration management and test support; (4) program management support; (5) PEO-T management integration and process improvement support; and (6) contract level and task order management. *Id.* at 2.

The RFQ anticipated the issuance of a task order with fixed-price and time-and-materials line items, with a 10-month base period and four 1-year options. RFQ at 1-2. The solicitation advised that quotations would be evaluated based on the following three factors: (1) technical capability, (2) past performance, and (3) price. *Id.* at 8. The technical capability factor had five equally-weighted subfactors: (1) transition plan, (2) security engineering support, (3) systems engineering support, (4) staffing approach, and (5) mission essential plan. *Id.* at 8-9. For purposes of award, the non-price factors were "significantly more important" than price. *Id.* at 8.

The agency received quotations from six vendors, including NextGen and Paragon, by the closing date of July 6. Contracting Officer's Statement (COS) at 3. The agency conducted discussions with NextGen, Paragon, and a third vendor and received revised quotations; the quotations of the other three vendors were eliminated from the competition as technically unacceptable. AR, Tab 144, Best-Value Decision Document

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<sup>1</sup> While counsel for the Department of the Air Force represented the agency in this protest, all references to the agency herein are to USTRANSCOM.

<sup>2</sup> Although the solicitation was issued as an RFQ, the record and the parties' briefing refer interchangeably to proposals and quotations, and offerors and vendors. We use the terms quotation and vendor for the sake of consistency.

<sup>3</sup> Citations to the solicitation are to RFQ amendment 3.

(BVDD) at 4. The agency evaluated NextGen's and Paragon's revised quotations as follows:<sup>4</sup>

	NEXTGEN	PARAGON
<b>Technical Capability</b>		
Transition Plan	Acceptable	Acceptable
Security Engineering Support	Superior	Superior
Systems Engineering Support	Acceptable	Acceptable
Staffing Approach	Superior	Superior
Mission Essential Plan	Acceptable	Acceptable
<b>Past Performance</b>	Substantial	Substantial
<b>Confidence</b>	Confidence	Confidence
<b>Price</b>	\$57,642,182	\$52,030,74

*Id.*

The contracting officer, who was also the source selection authority, noted that NextGen's and Paragon's quotations each had "advantages" that provided benefits to the government under the security engineering support and staffing approach subfactors of the technical capability factor. *Id.* at 9. The contracting officer found, however, that the strengths offered by Paragon's quotation were "more advantageous" than those offered by NextGen's quotation. *Id.* The contracting officer also found "no discernable difference" between NextGen's and Paragon's quotations under the past performance factor. *Id.* Based on these findings, and Paragon's lower price, the contracting officer selected Paragon's quotation for award. *Id.* at 9-10.

The agency issued the order to Paragon on December 30, and notified NextGen of the award on December 31. AR, Tab 150, Successful Vendor Notice at 1; Tab 146, Unsuccessful Vendor Notice for NextGen at 1. This protest followed.

## DISCUSSION

NextGen raises four primary challenges to USTRANSCOM's issuance of the task order to Paragon: (1) the agency unreasonably evaluated the protester's quotation under the transition plan and systems engineering support subfactors of the technical capability factor; (2) the agency unreasonably evaluated the realism of the awardee's quoted price and professional compensation in connection with the staffing approach subfactor of the technical capability factor; (3) the agency unreasonably evaluated the vendors' past

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<sup>4</sup> For the subfactors of the technical capability factor, the agency assigned one of the following ratings: superior, acceptable, susceptible of being made acceptable, or unacceptable. AR, Tab 143, Source Selection Evaluation Team (SSET) Report at 5. For the past performance factor, the agency assigned one of the following ratings: substantial confidence, satisfactory confidence, or limited to no confidence. *Id.*

performance; and (4) the agency conducted misleading discussions with the protester concerning its quoted price.<sup>5</sup> For the reasons discussed below, we find no basis to sustain the protest.

Where, as here, an agency issues an RFQ to vendors under the FSS provisions of FAR subpart 8.4 and conducts a competition for the issuance of an order, our Office will not reevaluate the quotations; rather, we review the record to ensure that the agency's evaluation was reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. *Digital Solutions, Inc.*, B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 4; *DEI Consulting*, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2. A protester's disagreement with the agency's judgment, without more, does not establish that an evaluation was unreasonable. *DEI Consulting, supra*.

Competitive prejudice is an essential element of a viable protest, and we will sustain a protest only where the protester demonstrates that, but for the agency's improper actions, it would have had a substantial chance of receiving the award. See *DRS ICAS, LLC*, B-401852.4, B-401852.5, Sept. 8, 2010, 2010 CPD ¶ 261 at 21-22. Where the record establishes no reasonable possibility of prejudice, we will not sustain a protest even if a defect in the procurement is found. See *Procentrix, Inc.*, B-414629, B-414629.2, Aug. 4, 2017, 2017 CPD ¶ 255 at 11-12.

#### Technical Evaluation

NextGen argues that USTRANSCOM improperly assigned its quotation ratings of acceptable under the transition plan and systems engineering support subfactors of the technical capability factor, and should have instead assigned higher ratings of superior. Protest at 19-29. We find no merit to these arguments and address three representative examples.<sup>6</sup>

The RFQ defined the two highest adjectival ratings that could be assigned for each of the technical capability subfactors as follows:

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<sup>5</sup> The protester also raises additional collateral arguments. Although we do not address each argument, we have considered all of the protester's contentions and find that none provides a basis to sustain the protest.

<sup>6</sup> NextGen's initial protest identified numerous aspects of its quotation that it argued should have merited strengths and therefore a higher rating of superior for the transition plan and systems engineering support subfactors. Although USTRANSCOM responded to all of the protester's arguments in the agency report, the protester's comments addressed only some of those arguments. See COS at 10-21; Comments & Supp. Protest at 18-26. We find that the issues that were initially raised in the protest, addressed in the agency report, but not addressed by the protester's comments, were abandoned. See 4 C.F.R. § 21.3(i)(3) ("GAO will dismiss any protest allegation or argument where the agency's report responds to the allegation or argument, but the protester's comments fail to address that response").

Superior: The quote meets all the requirements identified in the PWS or RFQ as related to the Technical Capability subfactor and exceeds one or more requirements. Such additions provide benefit to the Government.

Acceptable: The quote meets all the requirements identified in the PWS or RFQ as related to the Technical Capability subfactor.

RFQ at 9.

The transition plan subfactor advised that a vendor's "transition plan will be evaluated to ensure phase-in requirements are met in accordance with PWS paragraph 8.1." RFQ at 9. As relevant here, the PWS requires the contractor to "have 100% of key personnel/positions identified in the quote with all key positions filled and at least fifty percent (50%) of all necessary personnel available to support each task at the time of performance start to deliver the required capabilities," and to "have least ninety percent (90%) of personnel available to support each task [not later than] fifteen (15) work days after performance start." AR, Tab 16, RFQ amend. 1, PWS at 41. The agency assigned the protester's quotation a rating of acceptable, finding that it "detailed a transition plan that identified key people, processes, and activities necessary for a successful transition" and therefore "met the requirements identified in the PWS for this subfactor." AR, Tab 144, BVDD at 4-5.

NextGen argues that its quotation exceeded the requirements of PWS paragraph 8.1 because it proposed to address "[f]ourteen (14) action items which will occur before the Transition Start Date. . . ." Protest at 15; see AR, Tab 39, NextGen Technical Capability Quotation at 10. The protester contends that the agency should have recognized these benefits and assigned its quotation a superior rating for the transition plan subfactor.

USTRANSCOM states that it did not view the protester's proposed approach as exceeding the minimum requirements in a manner that provided a benefit to the government. COS at 15. With regard to the action items, the agency explains that certain of the action items "simply cannot be accomplished prior to the start of the transition period[.]" including for example: "Present key staff to Government COR [contracting officer's representative] for approval and recommendations and create an in-processing schedule for [common access card], badging, user account transactions." *Id.* at 14 (*quoting* AR Tab 39, NextGen Technical Capability Quotation at 9). The agency also states that providing deliverables that are the responsibility of the incumbent contractor during the transition period do not provide benefits to the government. *Id.* at 15. We find that the protester's disagreement with the agency's judgment as to whether the identified action items provide a benefit to the government does not show that the agency's evaluation was unreasonable. See *DEI Consulting, supra*.

The systems engineering support subfactor advised that a "Schedule Contractor's approach for support managing requirements using the Defense Acquisition Guidebook

systems engineering and requirements management process will be evaluated to ensure requirements are met in accordance with PWS paragraph 1.3.2.2.” RFQ at 9. The agency assigned the protester’s quotation a rating of acceptable, finding that it “addressed all technical and technical management processes in accordance with the PWS” and therefore “met the requirements identified in the PWS for this subfactor.” AR, Tab 144, BVDD at 6.

The protester contends that it exceeded the RFQ requirement to “[c]onduct test[s] on software upgrades” because it proposed to use its “[Development Security Operations (DevSecOps)] Software Factory Toolchain, [which is] specifically designed to support enhanced testing visibility and continuous [Authority to Operate] where available.” Comments & Supp. Protest at 24-25 (*quoting* AR, Tab 16 NextGen Technical Quotation at 7). The protester contends that the agency should have recognized these benefits and assigned its quotation a superior rating for the systems engineering support subfactor.

The agency states that it did not consider the protester’s proposal to test software upgrades through a DevSecOps approach to exceed the solicitation requirements in a manner that provides benefits to the government because “the Government has an established DevSecOps pipeline and team in place.” COS at 20. The agency further explains that the protester’s quotation did not address “additional support through agile, cloud, and DevSecOps that the Government does not already have in place or that is not common industry methodologies.” *Id.* Here again, we find that the protester’s disagreement with the agency’s judgment as to whether its quotation provided a benefit to the government does not show that the agency’s evaluation was unreasonable. See *DEI Consulting, supra*.

Finally, the protester argues that because the agency assigned strengths to its quotation under the staffing approach and security engineering support subfactors, the agency should have also assigned additional strengths to the protester’s quotation under the transition plan and the systems engineering support subfactors. For example, the protester notes that the agency’s evaluation of its quotation under the staffing approach subfactor cited the following strength concerning the availability of staff at the start of performance:

NextGen proposed 100% staffing at performance start which exceeds the PWS requirement of having all necessary personnel available to support at least 50% staffing at the time of performance start. The proposed staffing level benefits the Government by minimizing interrupted operations and loss of productivity while on-ramping new employees, as all employees will already be in place. Transition-in only occurs once in the contract. Exceeding required staffing early in transition maximizes information transfer, which is valuable because that opportunity is time limited.

AR, Tab 144, BVDD at 7. The agency also identified a similar strength for Paragon, based on its approach to the availability of personnel at the start of performance. *Id.* Based on these and other strengths, the agency assigned both vendors' quotations ratings of superior for the staffing approach subfactor. *Id.*

NextGen contends that because the agency found that its quotation merited a strength under the staffing approach subfactor for exceeding the minimum requirements for personnel at the start of performance and during transition in a manner that provided a benefit to the government, the agency was obligated to also find that this aspect of the protester's quotation merited a strength under the transition plan subfactor. Protest at 23-24. The protester argues that the agency should therefore have found that its quotation exceeded the requirements for the transition subfactor and assigned it a superior rating for that subfactor.

The agency contends that the evaluation was reasonable because quotations were evaluated "independently" under each evaluation subfactor. COS at 17. The agency states that while "elements of the staffing plan were incorporated into the transition plan," assigning a strength under both subfactors for the same quotation feature "would have been unreasonably duplicative." *Id.*

We note that the transition plan subfactor referenced PWS paragraph 8.1, which sets forth minimum staffing levels that must be achieved at the start of performance and the transition period. RFQ at 9. In contrast, the staffing approach subfactor addresses two criteria: (1) level of effort and the mix of labor, and (2) compensation; the subfactor does not reference PWS paragraph 8.1 and the transition schedule. *Id.* Thus, the assignment of strengths based on vendors' quotations to exceed the minimum staffing levels under the deadlines set forth in PWS paragraph 8.1 may have been more appropriate under the transition plan subfactor, rather than the staffing approach factor.

We find no basis to conclude, however, that the agency committed a prejudicial error by assigning a strength to the protester's and awardee's quotations under the staffing approach subfactor, rather than the arguably more appropriate transition plan subfactor. See *DRS ICAS, LLC, supra*; *Procentrix, Inc., supra*. In this regard, assigning the protester and awardee strengths under the transition plan subfactor would not have improved the protester's chance for award.

Further, to the extent the protester argues that the agency should have assigned an additional strength to the protester's quotation under the transition plan factor, we also find no basis to conclude that the protester could have been prejudiced by this evaluation. As discussed above, the agency found that both vendor's quotations under the staffing approach subfactor exceeded the minimum requirements in a manner that provided benefit to the government because "[e]xceeding required staffing early in transition maximizes information transfer, which is valuable because that opportunity is time limited." AR, Tab 144, BVDD at 7. Thus, the assignment of an additional strength for the protester would require an additional strength for the awardee. On this record, we find no basis to sustain the protest.

## Price Evaluation

NextGen argues that USTRANSCOM unreasonably found that Paragon's quoted labor rates were realistic, and that the agency failed to reasonably evaluate the awardee's quoted professional compensation as required by the staffing approach subfactor of the technical capability factor. Protest at 29-31; Comments & Supp. Protest at 27-33. We find no merit to the protester's arguments concerning the elevation of labor rates. We also find that although the evaluation of professional compensation was flawed, the protester does not establish that it was prejudiced by the evaluation.

### Realism of Labor Rates

As a general matter, when awarding a fixed-price contract or task order, an agency is only required to determine whether the offered prices are fair and reasonable. See FAR 16.505(b)(3), 15.402(a); *HP Enter. Servs., LLC*, B-413888.2 *et al.*, June 21, 2017, 2017 CPD ¶ 239 at 5. An agency may, however, provide in a solicitation for a fixed-price contract or task order that the agency will conduct a price realism analysis for the limited purposes of assessing whether an offeror's or vendor's low price reflects a lack of technical understanding or performance risk. See FAR 15.404-1(d)(3); *Emergint Techs., Inc.*, B-407006, Oct. 18, 2012, 2012 CPD ¶ 295 at 5-6. The nature and extent of an agency's price realism analysis are matters within the agency's discretion. *Arrington Dixon & Assocs., Inc.*, B-409981, B-409981.2, Oct. 3, 2014, 2014 CPD ¶ 284 at 6. Our review of a price realism analysis is limited to determining whether it was reasonable and consistent with the terms of the solicitation. *Epic Sys., Inc.*, B-418104, B-418104.2, Jan. 2, 2020, 2020 CPD ¶ 1 at 6. A protester's disagreement with the nature and extent of an agency's price realism methodology does not provide a basis on which to sustain a protest. See *BillSmart Solutions, LLC*, B-413272.4, B-413272.5, Oct. 23, 2017, 2017 CPD ¶ 325 at 10.

Here, the solicitation advised that "[t]he Government reserves the right to conduct a realism analysis to determine whether the fully-burdened rates quoted are too low for the work to be performed and pose a performance risk to the Government." RFQ at 12. The agency elected to conduct a price realism analysis of vendors' quoted labor rates. One of the evaluation techniques used by the agency was a comparison of vendors' quoted labor rates to data in the General Services Administration Contract-Awarded Labor Category (GSA CALC) Tool, which is a database that "enables federal contracting officers and others to find actual awarded prices to use in negotiations for labor contracts," and provides data on "ceiling prices, fully burdened costs, and services data." AR, Tab 139, Price Analysis at 9.

For Paragon, the agency found that 8 of its 17 quoted labor rates "fell outside -1 standard deviation [of the GSA CALC Tool average] and were determined to be potentially unrealistically low for the work to be performed," and that 3 of those 8 rates "fell outside of the low range for that specific labor category and were determined to be potentially unrealistically low." *Id.* at 10. For NextGen, the agency found that 23 of its

56 quoted labor rates “fell outside -1 standard deviation and were determined to be potentially unrealistically low for the work to be performed,” and that 12 of those 23 rates “fell outside of the low range for that specific labor category and were determined to be potentially unrealistically low.” *Id.* at 11-12.

The agency conducted discussions with the protester and awardee, and advised them that their “fully-burdened proposed labor rates quoted appear too low for the work to be performed,” and that the vendors should “provide justification as to how [they] will successfully accomplish the requirements of the PWS, specific to the following labor category(ies) and/or revise your quote accordingly. . . .” AR, Tab 78, NextGen Discussions Questions at 2; Tab 116, Paragon Discussions Questions at 2.

In response to discussions, NextGen elected to raise its labor rates to address the agency’s concerns.<sup>7</sup> AR, Tab 79, NextGen Discussions Response at 3-4. The agency found that the revised labor rates were realistic. AR, Tab 139, Price Analysis at 12-13. Paragon did not revise its labor rates, and instead provided a justification for the quoted rates. AR, Tab 117, Paragon Discussions Response at 11-13. The agency found that although the awardee’s quoted labor rates remained below the averages from the GSA CALC Tool, the awardee’s responses adequately demonstrated that the rates were realistic. AR, Tab 139, Price Analysis at 10-11.

NextGen argues that the price realism analysis was unreasonable because it relied on data from the GSA CALC Tool and did not compare the awardee’s labor rates to other available sources of information, specifically the incumbent contractor’s rates and the protester’s quoted rates. Comments & Supp. Protest at 28. As discussed above, agencies have discretion as to the type of analysis they conduct to determine the realism of quoted prices. *Arrington Dixon & Assocs., Inc., supra*. Absent a specific provision in a solicitation, agencies are not required to conduct price realism analyses using any particular methodology. *NTT DATA Servs. Fed. Gov., Inc.*, B-417235.2, B-417235.3, Jan. 2, 2020, 2020 CPD ¶ 19 at 4. For example, our Office has explained that agencies are not required to conduct a price realism analysis based on a comparison of an offeror’s or vendor’s prices to: the prices for the incumbent contract; prices proposed by the incumbent contractor; or prices proposed by other vendors or offerors. *Arcanum Group, Inc.*, B-413682.2, B 413682.3, Mar. 29, 2017, 2017 CPD ¶ 270 at 6; *RELI Grp., Inc.*, B-418005, Dec. 23, 2019, 2020 CPD ¶ 53 at 5; *Pemco Aeroplex, Inc.*, B-310372.3, June 13, 2008, 2008 CPD ¶ 126 at 8.

The solicitation here did not commit the agency to use any particular methodology to evaluate price realism, and the protester does not explain why use of the GSA CALC Tool was unreasonable. For these reasons, we find no basis to conclude that the agency unreasonably failed to evaluate prices based on a comparison to the incumbent rates or to the protester’s proposed rates.

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<sup>7</sup> As discussed below, the protester argues that these discussions were misleading.

NextGen also argues that the agency should not have found that the awardee's discussions response supported the realism of its quoted labor rates. Comments & Supp. Protest at 33-34. The agency concluded that Paragon's response to the discussions demonstrated that the labor rates were realistic, based on the following findings:

Paragon stated in their response that the rates proposed are emphasizing people and mission and minimizing corporate overhead costs. Paragon's fully burdened rates are directly derived from the target salaries in the "Rate Build" tab of Attachment 8's spreadsheet and are based on a lean, competitive margin for Paragon, which emphasizes a competitive discount from Paragon's approved GSA rates and ensures their ability to retain quality staff by focusing on direct labor salaries and minimizing Paragon's indirect rates. The target salaries for all labor categories in the "Rate Build" sheet are accompanied by the results of salary survey for the Scott AFB [Air Force Base] market. Paragon's TEP [total evaluated price] of \$52,030,746.90 did not change. Paragon's response was determined acceptable, and all rates were determined realistic.

AR, Tab 139, Price Analysis at 10-11.

The protester argues that the agency's evaluation did not apply sufficient scrutiny to the awardee's responses, particularly in light of the fact that the agency did not compare the awardee's labor rates to the incumbent rates or the protester's quoted prices. As discussed above, however, agencies are not required to use any particular methodology to assess the realism of quoted prices. *NTT DATA Servs. Fed. Gov., Inc., supra*. To the extent the protester generally contends that the agency should not have accepted the awardee's justification for the realism of its quoted labor rates, we find that the protester's disagreement with the agency's judgment does not provide a basis to sustain the protest. See *BillSmart Solutions, LLC, supra*.

#### Professional Compensation

Next, the protester argues that the agency unreasonably found that the awardee's professional compensation was realistic. The staffing approach subfactor stated that the agency would evaluate vendors' quotations based on: (1) level of effort and labor mix, and (2) professional compensation. RFQ at 9. With regard to the latter criterion, the RFQ advised that a vendor's "Professional Compensation Plan will be evaluated in accordance with FAR [provision] 52.222-46, Evaluation of Compensation for Professional Employees." *Id.*

FAR provision 52.222-46 states in relevant part:

As part of their proposals, offerors will submit a total compensation plan setting forth salaries and fringe benefits proposed for the professional employees who will work under the contract. The

Government will evaluate the plan to assure that it reflects a sound management approach and understanding of the contract requirements. This evaluation will include an assessment of the offeror's ability to provide uninterrupted high-quality work. The professional compensation proposed will be considered in terms of its impact upon recruiting and retention, its realism, and its consistency with a total plan for compensation.

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[P]roposals envisioning compensation levels lower than those of predecessor contractors for the same work will be evaluated on the basis of maintaining program continuity, uninterrupted high-quality work, and availability of required competent professional service employees.

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Professional compensation that is unrealistically low or not in reasonable relationship to the various job categories, since it may impair the [c]ontractor's ability to attract and retain competent professional service employees, may be viewed as evidence of failure to comprehend the complexity of the contract requirements.

FAR provision 52.222-46. In the context of fixed-price contracts, our Office has explained that this FAR provision anticipates an evaluation of whether an awardee understands the contract requirements, and has proposed a compensation plan appropriate for those requirements--in effect, a price realism evaluation regarding an offeror's or vendor's proposed compensation, as opposed to the overall proposed price. *Apptis Inc.*, B-403249, B-403249.3, Sept. 30, 2010, 2010 CPD ¶ 237 at 9. As relevant here, an agency must evaluate the realism of the proposed compensation, that is, salaries, as compared to burdened labor rates or overall prices. *Inquiries, Inc.*, B-417415.2, Dec. 30, 2019, 2020 CPD ¶ 54 at 20-21.

The agency found that Paragon's "proposed Compensation Plan reflects a sound management approach" based on its employee benefits and its "plan to hire and retain quality personnel through an approach that supports consistent provisioning of systems engineers, security engineers, test managers, and all other staffing requirements." AR, Tab 143, SSET Report at 9. The agency also found that the awardee's salary plan was "structured by differences in skills, complexity of various disciplines, and professional job difficulty." *Id.*

NextGen argues that the agency unreasonably evaluated Paragon's professional compensation plan because, although the agency reviewed the narrative portion of the plan addressing benefits, the agency did not directly evaluate the quoted compensation, that is, employee salaries. Comments & Supp. Protest at 15. In this regard, NextGen explains that it quoted "actual salaries for incumbent staff averaged by category," based

on information from its proposed subcontractor Amyx, Inc., which is the incumbent contractor for these requirements. *Id.* at 16; AR, Tab 41, NextGen Professional Compensation Plan at 5. The protester identifies five of the awardee's labor categories and argues that the quoted salaries for those positions were lower than salaries for the protester's corresponding labor categories. Comments & Supp. Protest at 15. The protester contends that the differences between the salaries shows that the agency should have found the awardee's professional compensation less likely to result in high quality, uninterrupted services.

The agency states that it evaluated compensation by reviewing quoted burdened labor rates. Supp. COS at 11-13. The record shows, and the agency does not specifically dispute, however, that the agency did not evaluate vendors' quoted salaries --that is, the unburdened component of the labor rates--for realism. See *id.* Despite the agency's failure to evaluate the quoted salaries, we do not think that the protester was prejudiced by this error.

In connection with the protester's price realism arguments, the agency explains that it did not compare the burdened labor rates quoted by the awardee to those from the incumbent contract or those quoted by the protester. In this regard, the agency states that "due to differing labor categories associated with each unique approach, it was impossible to map quoted labor categories with those of the incumbent and it was therefore impossible to compare labor rates to those from the previous contract." *Id.* at 22. The agency further states that "[t]he same issue was present in reviewing NextGen's proposed rates against Paragon's rates." *Id.* at 16; see also *id.* at 18-19. With regard to the protester's challenge to the evaluation of professional compensation, the agency also contends that the protester's argument relies on inapt comparisons of labor categories. *Id.* at 9-10.

The protester's challenge concerning professional compensation identifies five positions, and contends that the awardee's lower quoted salaries show that the agency should have found them to be unrealistic. Comments & Supp. Protest at 15. The protester does not explain, however, why these five positions are comparable for purposes of assessing the realism of the awardee's quoted salaries. For example, the protester compares its program manager II, program manager III, and program manager IV positions to the awardee's respective project manager I, project manager II, and project manager III positions, but does not explain how its program managers are comparable to the awardee's project managers. *Id.* The protester in fact acknowledges that "in many instances, as with the Program Manager categories, [NextGen] proposed one or more categories more senior than the categories proposed by Paragon." Comments & Supp. Protest at 15 n.3.

While the protester's arguments rely on comparing less senior Paragon positions to more senior, and more highly-paid NextGen positions, the protester does not argue that the awardee's proposed positions or overall technical approach were inadequate to perform the PWS requirements. On this record, we find no basis to conclude that the protester was prejudiced by the agency's failure to evaluate the awardee's professional

compensation. See *DRS ICAS, LLC, supra*; *Procentrix, Inc., supra*. We therefore find no basis to sustain the protest.

### Past Performance Evaluation

NextGen challenges the evaluation of the protester's and awardee's quotations under the past performance factor. The protester primarily argues that the agency improperly failed to consider negative past performance concerning one of Paragon's proposed subcontractors, and that the agency's evaluation was improperly limited to the most recent reports from the contractor performance assessment reporting system (CPARS). We find no merit to these arguments.

An agency's evaluation of past performance, which includes its consideration of the relevance, scope, and size of an offeror's or vendor's performance history, is a matter of discretion, which we will not disturb unless the agency's assessment is unreasonable or inconsistent with the solicitation criteria. See *Metropolitan Life Ins. Co.*, B-412717, B-412717.2, May 13, 2016, 2016 CPD ¶ 132 at 14. When a protester challenges an agency's past performance evaluation, we will review the evaluation to determine if it was reasonable and consistent with the solicitation's evaluation criteria, and procurement statutes and regulations, and to ensure that the agency's rationale is adequately documented. *DynCorp Int'l, LLC*, B-412451, B-412451.2, Feb. 16, 2016, 2016 CPD ¶ 75 at 14.

As discussed above, the agency assigned NextGen's and Paragon's quotations the highest possible ratings of superior for the past performance factor. AR, Tab 144, BVDD at 4. In the award decision, the contracting officer stated that she found "no discernable difference" between NextGen's and Paragon's quotations under the past performance factor. *Id.* at 9.

### Information Not Considered

NextGen argues that the agency should have considered negative past performance information concerning Paragon's proposed subcontractor, OBXtek, Inc., that was not addressed in the awardee's quotation. Comments & Supp. Protest at 7-11. The protester contends that this information could have been found by the agency and that the agency was therefore obligated to consider it.

We have recognized that in certain limited circumstances, an agency has the obligation --as opposed to the discretion--to consider outside information bearing on an offeror's or vendor's past performance when those circumstances support a conclusion that the agency should have been aware of the information. See *International Bus. Sys., Inc.*, B-275554, Mar. 3, 1997, 97-1 CPD ¶ 114 at 5. Our Office has generally limited application of this principle to circumstances where the information relates to contracts for the same services with the same procuring activity, or information personally known to the evaluators. *Ace-Federal Reporters, Inc.*, B-417846.4, B-417846.5, Apr. 23, 2020,

2020 CPD ¶ 150 at 12; *Leidos, Inc.*, B-414773, B-414773.2, Sept. 12, 2017, 2017 CPD ¶ 303 at 10.

Here, NextGen argues that a decision issued by our Office, *OBXtek, Inc.*, B-417880 *et al.*, Nov. 25, 2019, 2019 CPD ¶ 410, addressed negative past performance by OBXtek in connection with the firm's challenge to the award of a contract by the Defense Health Agency (DHA). OBXtek argued that the agency's evaluation of the realism of its proposed compensation improperly relied on outdated negative past performance information that DHA identified concerning OBXtek's "fill rate on a current contract for staffing and technical acquisition services support for the Air Force."<sup>8</sup> *Id.* at 6. NextGen argues that the negative past performance information addressed in *OBXtek, Inc.* concerned contracting, program management, and acquisition support services that were similar to those required in the RFQ here. The protester argues that because DHA was able to identify negative information concerning OBXtek's past performance of an Air Force contract, USTRANSCOM should have also identified and considered the same information.

The agency states that contracting officials were not aware of the negative past performance information concerning OBXtek identified by the protester. See Supp. COS at 4. The agency further contends that there was no reason for it to know of the information concerning OBXtek because the circumstances here are different from those where our Office has found an agency was obligated to consider such information. Supp. Memorandum of Law (MOL) at 7-8; 3rd Supp. MOL at 6-7. In this regard, the agency states that USTRANSCOM is not a component of the Air Force, and is instead a "Joint Combatant Command pursuant to 10 U.S.C. [§] 6." 3rd Supp. MOL at 6. The agency explains that "[l]eadership elements of USTRANSCOM fall within the Army, the Navy, the Air Force and the Marines." *Id.* Although the current Commander of USTRANSCOM is an Air Force General Officer, the agency states that the prior Commander was an Army General Officer and that "[t]he Chain of Command runs from the President to the Secretary of Defense to the USTRANSCOM Commander through the Joint Chief of Staff." *Id.*

On this record, we find no basis to conclude that USTRANSCOM was obligated to know and consider the information concerning OBXtek addressed in our decision in *OBXtek, Inc.* We think the agency reasonably explains that USTRANSCOM is not a component of the Air Force, and should not otherwise be considered synonymously with the Air Force for purposes of applying the principle set forth in *International Bus. Sys., Inc.* and related decisions. Moreover, even if the protester were correct that USTRANSCOM should be regarded as part of the Air Force, our decisions do not state that an agency is charged with knowledge of all contracts or task orders awarded by that agency. Rather, we have applied the principle where the past performance concerns the same

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<sup>8</sup> Fill rate in this context refers to the ability to staff required positions. Our Office denied OXBtek's protest, concluding that the agency was within its discretion to consider relevant past performance information to assess the realism of the protester's quoted compensation. *OBXtek, Inc.*, *supra* at 6-7.

requirements for the same procuring activity. See *Ace-Federal Reporters, Inc., supra*; *Leidos, Inc., supra*. We therefore find no basis to conclude that USTRANSCOM should be charged with knowledge of this information or that the agency unreasonably failed to consider it.

### Evaluation of CPARS Reports

NextGen argues that the agency unreasonably evaluated past performance because it did not consider all of the CPARS reports that were available concerning the protester's and awardee's performance. The past performance factor stated that the agency would consider up to four past performance references, and that the agency would evaluate the recency, relevancy, and quality of the performance identified in those references. RFQ at 7, 10-11. The solicitation stated that a past performance reference is recent if "the effort is ongoing or has been performed within the last three (3) years of the quotation due date." *Id.* at 10. The agency's evaluation of vendors' past performance efforts available within the CPARS considered only the most recent reports completed for those efforts, even if other reports were available. 2d Combined COS/MOL at 4.

The protester contends that the agency's evaluation was unreasonable because the RFQ stated that the agency would evaluate a past performance "effort" and defined the recency of the effort as a period of 3 years. Comments and 2nd Supp. Protest at 6-15. The protester therefore argues that the agency was obligated to consider all CPARS reports that were issued during the 3-year period.

The agency states that the RFQ defined 3 years as the period that would qualify as a recent past performance reference, but did not state that the agency would consider every CPARS report that addressed performance during the 3-year period. See RFQ at 10-11; 2d Combined COS/MOL at 4-5; 3d Supp. MOL at 2-6. The agency further argues that it reasonably limited consideration to the most recent CPARS report because it was the most relevant performance information. 2d Combined COS/MOL at 4.

Our Office has explained that, absent a solicitation provision obligating an agency to consider all CPARS reports over a specific period of time, an agency may reasonably limit its evaluation to the most recent CPARS reports--provided the evaluation is consistent for all offerors or vendors. *Booz Allen Hamilton, Inc.*, B-409355, B-409355.2, Mar. 19, 2014, 2014 CPD ¶ 100 at 6. Here, we agree with the agency that the RFQ did not expressly state that the agency would consider all CPARS records over a 3-year period. We also agree that the agency treated all vendors equally with regard to the scope of CPARS reports considered. For these reasons, we find that the agency was not obligated to consider every CPARS report that was available, and that the agency's consideration of the most recent CPARS report for each reference was reasonable.<sup>9</sup>

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<sup>9</sup> In any event, even if the agency were obligated to consider the other CPARS reports identified by the protester, there is no basis to conclude that the evaluation would have

NextGen also argues that the agency unreasonably evaluated Paragon's past performance because the most recent CPARS report for its proposed subcontractor OBXtek disclosed that the reviewing agency initially assigned a marginal rating to the contractor's performance in connection with meeting the work schedule, which was subsequently revised to a satisfactory rating. Comments & 2nd Supp. Protest at 12; AR, Tab 161, OBXtek CPARS Report W52P1J16D0052 at 3, 5. The protester contends that had the agency given proper consideration to the available information, the agency would have assigned a lower rating based on the marginal rating. To the extent the protester believes that USTRANSCOM should have relied more heavily on the reviewing agency's initial marginal rating, instead of the reviewing agency's finding that OBXtek's subsequent actions merited a satisfactory rating, the protester's disagreement with the agency's judgment does not provide a basis to sustain the protest.

### Misleading Discussions

Finally, NextGen argues that USTRANSCOM conducted discussions that were misleading because they improperly induced the protester to raise its price. Protest at 32-33. We find no merit to this argument

Where, as here, a competition is conducted among FSS vendors pursuant to FAR subpart 8.4, agencies are not required to conduct discussions in accordance with FAR subpart 15.3. See FAR 8.404(a); *AWS Convergence Techs., Inc.*, B-404002.2, B-404002.3, Apr. 20, 2011, 2011 CPD ¶ 95 at 9. If, however, an agency elects to conduct exchanges with vendors in FAR subpart 8.4 procurements, they must be fair and equitable. *USGC Inc.*, B-400184.2 *et al.*, Dec. 24, 2008, 2009 CPD ¶ 9 at 7-8. If an agency engages in exchanges with a vendor pursuant to a FAR subpart 8.4 procurement, our Office will look to the standards for discussions under FAR subpart 15.3 for guidance in determining whether the exchanges were fair and equitable. *Ricoh USA*, B-411888.2, Nov. 18, 2015, 2015 CPD ¶ 355 at 5-6. During discussions, agencies may not consciously mislead or coerce an offeror or vendor into raising its prices. See *Centerra Grp., LLC*, B-414768, B-414768.2, Sept. 11, 2017, 2017 CPD ¶ 284 at 7; *Eagle Tech., Inc.*, B-236255, Nov. 16, 1989, 89-2 CPD ¶ 468 at 3-4. We will not find coercion in discussions, however, where an agency in good faith provides accurate information to an offeror or vendor about its concern, and provides the offeror with the opportunity to explain or revise its prices. *First Info. Tech. Servs., Inc.*, B-405602, Dec. 1, 2011, 2011 CPD ¶ 261 at 10.

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been different. For example, the protester argues that CPARS reports for NextGen's proposed subcontractor Amyx that were not considered by the agency had additional positive ratings that were similar to those in the most recent report reviewed by the agency. Comments & 2d Supp. Protest at 14. Given that the protester contends that the additional CPARS reports detail similar information to the reports reviewed by the agency, we see no basis to find that agency's evaluation relied on inaccurate or distorted information.

As discussed above, the agency advised the protester and awardee that certain of their quoted labor rates were potentially unrealistically low. AR, Tab 78, NextGen Discussions Questions at 2; AR, Tab 116, Paragon Discussions Questions at 2; see also AR, Tab 139, Price Analysis at 10-12. The agency provided both vendors an opportunity to either raise their quoted labor rates or explain why the rates were realistic. *Id.* In response to the discussions, NextGen elected to raise the labor rates identified by the agency, while Paragon chose to explain why it believed its quoted rates were realistic. AR, Tab 79, NextGen Discussions Response at 3-4; AR, Tab 117, Paragon Discussions Response at 11-13.

NextGen contends that the discussions were misleading because the agency advised the protester that certain labor rates were potentially unrealistically low, even though those rates were higher than the rates that were initially quoted by Paragon and ultimately accepted by the agency. Comments & Supp. Protest at 35-37. The protester contends that, had the agency advised that its quoted labor rates were higher than Paragon's, the protester would not have raised those rates. *Id.* at 36.

We think the protester misstates the circumstances of the evaluation and thus the agency's obligation in conducting discussions. At the time the agency conducted discussions, it advised both vendors that certain of their quoted labor rates were potentially too low to be found realistic. Although some of the awardee's labor rates were lower than the protester's rates, both vendor's rates were lower than the average rates in the GSA CALC Tool that the agency consulted for the price realism analysis. AR, Tab 139, Price Analysis at 10-12. The agency's acceptance of Paragon's quoted labor rates as realistic thus occurred only after the awardee provided additional explanations for the realism of the rates. *Id.* at 10-11. We therefore find no merit to the protester's contention the agency knew prior to conducting discussions that the awardee would elect to further justify its quoted labor rates, or that the agency would find the awardee's justifications realistic.

We further note that agencies are not required to advise during discussions that an offeror's or vendor's costs or prices are higher or lower than other competitors. See *Centerra Grp.*, *supra* at 6. Instead, an agency may conduct meaningful discussions by advising an offeror or vendor that its price is too high or low. *Wellspring Worldwide, Inc.*, B-417282.2 *et al.*, Dec. 20, 2019, 2020 CPD ¶ 10 at 10. We find no basis to conclude that the agency conducted misleading or otherwise improper discussions with the protester, as both vendor's labor rates were low at the time discussions occurred and were advised as such. We therefore deny the protest based on these arguments.

The protest is denied.

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