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Decision

Matter of: KOAM Engineering Systems, Inc.

File: B-420157.2

Date: July 6, 2022

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Tracey L. Ferguson, Esq., Department of the Navy, the agency.

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DIGEST

1. Protest alleging that the awardee gained an unfair competitive advantage based on an apparent conflict of interest where one of the awardee's proposed key persons is married to an agency contracting officer's representative on the protester's incumbent contract is denied where the record reflects that the agency official was not involved in the instant procurement and the protester's cost information from the incumbent contract was not disclosed, or, alternatively, the awardee would not have obtained an unfair competitive advantage by virtue of receiving the information.

2. Protest challenging agency's cost realism evaluation is denied where the record demonstrates the upward adjustments to the awardee's proposed costs were not inconsistent with the solicitation, and that the agency reasonably determined those adjustments did not indicate the awardee lacked an understanding of the agency's requirements.

DECISION

KOAM Engineering Systems, Inc. (KES), of San Diego, California, protests the award of a contract to McKean Defense Group, LLC (McKean), of Philadelphia, Pennsylvania, under request for proposals (RFP) No. N6600121R0041, issued by the Department of the Navy, for support services to the Naval Information Warfare Systems Center Pacific Network Integration Engineering Facility (NIEF). The protester contends a personal conflict of interest (or the appearance of such) tainted the award decision, and that the Navy's cost evaluation of McKean's proposal was unreasonable.

We deny the protest.

BACKGROUND

The agency issued the solicitation on January 27, 2021, pursuant to the procedures in Federal Acquisition Regulation (FAR) part 15, anticipating the award of a single indefinite-delivery, indefinite-quantity (IDIQ) contract, with a 1-year based period of performance and four, 1-year option periods, where task orders will be issued on a cost-plus-fixed-fee basis. Agency Report (AR), Tab 1, RFP at 0001.¹ The RFP sought engineering support services for the Naval Information Warfare Systems Center Pacific's NIEF. *Id.* at 0012. Specifically, the contractor will provide program management, basic research, end-to-end system design, prototype development, systems engineering, integration, environmental qualification testing, production, software loading, pre-installation testing and checkout (PITCO), deployment, and life cycle support of Command, Control, Communications, Computer, Intelligence, Surveillance, and Reconnaissance (C4ISR) systems. *Id.*

The solicitation provided for award on a best-value tradeoff basis, considering three non-price evaluation factors, listed in descending order of importance: (1) technical approach; (2) past performance; and (3) small business participation. *Id.* at 0120. The evaluation would proceed in four phases. First, the agency would evaluate an offeror's acceptability on a pass/fail basis.² *Id.* at 0121. Second, the agency would evaluate an offeror's capability by considering its technical approach, past performance, and small business participation. *Id.* Under the technical approach factor, the Navy would evaluate the "extent to which an offeror clearly and accurately describes the process, procedures, and/or actions necessary to address" four hypothetical questions/scenarios, so as to demonstrate an offeror's approach and understanding of the Navy's requirement.³ *Id.* Past performance would be evaluated to assess an "offeror's demonstrated recent and relevant record of performance in supplying products and

¹ Our citations to the record correspond to the Bates numbering appearing on the agency report documents.

² The solicitation provided, "[t]he Government will consider an offer to be acceptable when it manifests the offeror's assent, without exception or imposition of condition, to the terms and conditions" of the RFP. RFP at 0121.

³ The agency would assign one of the following adjectival ratings under the technical approach factor: outstanding; good; acceptable; marginal; or unacceptable. *Id.* at 0122.

services that meet the contract’s requirements.”⁴ *Id.* at 0122. The agency would also consider the total percentage of an offeror’s small business participation.⁵ *Id.* at 0124.

In the third phase, the Navy would “evaluate the estimated cost and proposed fee of each offer for realism and reasonableness[.]” *Id.* at 0124. The RFP advised that “[p]roposed costs may be adjusted, for purposes of evaluation, based upon the results of the cost realism evaluation.” *Id.* The fourth, and last, phase of the Navy’s evaluation was the cost/technical best-value tradeoff. *Id.* at 0125. The solicitation explained that “[t]he non-cost evaluation factors, when combined, are significantly more important than cost” but “the degree of importance of cost will increase with the degree of the equality of proposals in terms of the non-cost evaluation factors.” *Id.* at 0120.

The agency received proposals from KES and McKean by the submission due date. Contracting Officer’s Statement and Memorandum of Law (COS/MOL) at 3. The agency evaluated the proposals of KES and McKean as follows:

	KES	McKean
Technical Approach	Good	Good
Past Performance	Satisfactory Confidence	Satisfactory Confidence
Small Business Participation	Outstanding	Good
Proposed Cost	\$204,870,045	\$187,467,410
Probable Cost	\$204,870,045	\$195,045,486

AR, Tab 10, Business Clearance Memorandum (BCM) at 1492.

The Navy concluded that McKean represented the best value to the agency. AR, Tab 11, Award Notice and KES Debriefing at 1563. The agency determined that a tradeoff under the technical approach and past performance factors was not warranted based on the quality of the submitted proposals, and concluded that KES’s better small business utilization did not warrant the 4.8 percent price premium. *Id.* The agency made award to McKean on or about August 31. *Id.* at 1535.

Subsequent to a debriefing, KES filed a protest with our Office on September 14, challenging the agency’s evaluation of proposals and alleging the Navy failed to consider a potential conflict of interest. Our Office dismissed KES’s protest as academic on September 30, in response to the agency’s representation that it planned to take corrective action, to include reevaluating KES’s submitted past performance

⁴ Past performance would be assigned one of five adjectival confidence ratings: substantial confidence; satisfactory confidence; neutral confidence; limited confidence; and no confidence. *Id.* at 0124.

⁵ The RFP advised the Navy would assign one of the following adjectival ratings under the small business participation factor: outstanding; good; acceptable; marginal; or unacceptable. RFP at 0122

references and conducting an investigation into possible organizational and personal conflicts of interest. *KOAM Engineering Systems, Inc.*, B-420157, Sep. 30, 2021 (unpublished decision).

Following the agency's reevaluation of KES's past performance and investigation into the alleged conflict of interest, the Navy prepared a new best-value tradeoff and again selected McKean for award. AR, Tab 14, BCM Addendum at 1662. The Navy determined that the offerors' evaluation ratings remained unchanged following the reevaluation. *Id.* at 1661. And, again, the agency determined that KES's advantage under the small business utilization factor did not warrant paying the 4.8 percent price premium. *Id.* at 1661. In addition, the agency concluded that, following an investigation by the contracting officer (CO), the procurement was not tainted by a conflict of interest. *Id.* at 1656. The agency made award to McKean on or about March 14, 2022. Following a debriefing, KES filed this protest on March 29.

DISCUSSION

KES marshals two principal challenges to the agency's conduct of the procurement. First, the protester alleges the award to McKean was marred by a conflict of interest, or at least the appearance of one. Protest at 24-27; Comments at 2-12; Supp. Comments at 7-14. In this regard, the protester contends the appearance of impropriety arises from the fact that an employee of McKean's (whom we refer to as Mr. X), who helped prepare the firm's proposal in the instant procurement, is married to a Navy contracting officer's representative (COR), who worked as one of approximately eight CORs assigned to KES's incumbent contract and had access to the protester's cost information (we refer to this COR as Mrs. X). In the protester's view, the award to McKean was irrevocably marred by the appearance of a conflict of interest, and could not be rehabilitated, despite the agency's investigation into the matter. Second, the protester challenges the agency's cost realism evaluation. Protest at 27-32; Comments at 12-22; Supp. Comments at 14-22. Specifically, KES argues the Navy deviated from the solicitation's cost evaluation procedures, and unreasonably failed to rescore McKean's technical proposal after finding cost risk in the awardee's proposal. For the following reasons, we find no basis on which to sustain the protest.⁶

Conflict of Interest

KES contends the procurement was tainted by the appearance of a conflict of interest. Protest at 24-27; Comments at 2-12; Supp. Comments at 7-14. The protester points to the fact that Mrs. X, who had access to KES's confidential cost information through her prior performance as one of the CORs assigned to KES's incumbent contract, is married to one of McKean's proposed key personnel, who helped prepare the awardee's technical proposal for this procurement (Mr. X). KES argues that given their

⁶ KES raises other collateral allegations. Although our decision does not specifically address them all, we have considered each argument and find that none provides a basis on which to sustain the protest.

marriage, the fact that both worked in close proximity at home, and share a common financial interest, there is an irrefutable presumption of impropriety that cannot be overcome by the Navy's after-the-fact investigation. The protester urges our Office to presume that KES was prejudiced by the apparent conflict. In response, the agency contends that its investigation into the matter found no evidence that the COR participated in the instant procurement, or that the COR disclosed competitively useful information. AR, Tab 14, BCM Addendum at 1656; *id.*, attach. 3, Personal Conflict of Interest (PCI) Memo at 1781. As a result, the Navy argues that there is no basis to conclude any wrongdoing or competitive prejudice to KES that would warrant the awardee's exclusion from the competition.

The facts underlying the protester's allegation, as developed through the agency's investigation, are largely not in dispute. KES performed as the incumbent on the predecessor IDIQ contract. *Id.*, PCI Memo at 1773. One of the CORs on that contract, Mrs. X, in the course of performing her duties, had access to some of KES's non-public information. In this regard, the contracting officer for this procurement found that Mrs. X had access to KES's proprietary information stemming from the protester's submission of a task order proposal under the predecessor IDIQ contract, as recently as October 2020. *Id.*, PCI Memo, attach. 2 at 1785; attach. 3 at 1788. Specifically, Mrs. X had access to KES's task order proposal, which included relevant financial data, such as labor rates and indirect rates. *Id.*, PCI Memo, attach. 3 at 1788, attach. 5 at 1833.

The record also reflects that Mrs. X was not involved in any aspect of the instant procurement.⁷ See *id.*, PCI Memo at 1777. The contracting officer contacted the source selection evaluation board (SSEB) chair, the SSEB members, and the program lead regarding Mrs. X's participation in the procurement, all of whom reported that Mrs. X was not involved in developing the requirements for this effort, drafting the source selection strategy or solicitation, evaluating proposals, or selecting the awardee. *Id.*, PCI Memo, attach. 3 at 1791-1830. The contracting officer found no evidence to conclude that any members of the SSEB or supporting personnel violated their respective non-disclosure agreements or otherwise communicated with Mrs. or Mr. X with respect to the instant procurement, and that all applicable procurement files were saved to a restricted share drive that Mrs. X could not access. *Id.* at 1829-1830. Mrs. X also declares, in a declaration made under penalty of perjury, that she was not involved in the procurement. *Id.*, PCI Memo, attach. 5 at 1835.

Mr. X is a senior systems engineer for McKean and was offered as a key person in the awardee's proposal. *Id.*, PCI Memo, attach. 6 at 1. Mr. X was also involved in the

⁷ The agency's program lead states that Mrs. X's only possible involvement in the procurement was when he "may have asked her to provide input changes to the [Contract Data Requirement List (CDRL)] list." AR, Tab 14 BCM Addendum, attach. 3, PCI Memo, attach. 3 at 1818. In this regard, the program lead explained that the agency "carried over the same CDRLs from the existing contract," and he believed that he had asked all project leads and other staff working on the incumbent contract "for inputs (changes or corrections) to existing CDRLs." *Id.*

preparation of McKean's technical proposal. He explains that he provided input on technical matters, which were used to draft portions of McKean's proposal, but did not "draft the final technical section of the proposal, nor did [he] review the technical proposal before submission." *Id.* at 1839. Mr. X explains that he did not provide any input on McKean's cost proposal. *Id.*

Both Mr. and Mrs. X submitted declarations, under penalty of perjury, during the Navy's investigation. See *id.*, PCI Memo, attachs. 5 and 6. The declarations explain that while both Mr. and Mrs. X work out of the same home, they do so in separate offices. *Id.*, PCI Memo, attach. 5 at 1834. Mrs. X explains that her government computer requires a Common Access Card (CAC) for access and that Mr. X does not have access to her computer.⁸ *Id.* Mrs. X provides that while she was aware that her husband's company was developing a proposal for the instant procurement, the two did not have any discussion about the solicitation or the contract. *Id.* at 1834-1835. Further, Mrs. X explains that she disclosed her husband's employment on her Office of Government Ethics (OGE) Form 450. *Id.* at 1834. Finally, Mrs. X explains that she has "never discussed [her] role as COR or the details of that work with [her] husband" and she has "never disclosed any third-party proprietary information, like KES or its subcontractors' labor rates, or any other financial or contract information with Mr. [X]." *Id.* at 1834. Mrs. X further provides that "[t]he only thing I have discussed with Mr. [X] regarding my work at the NIEF is very high-level project details." *Id.* Mr. X's declaration provides similar information. Specifically, he states that he never received proprietary or confidential information about KES from Mrs. X, that he does not have access, nor has he viewed, KES's information, and that he and Mrs. X have not discussed KES's proposal. *Id.*, PCI Memo, attach. 6 at 1837-1838.

Based on the information developed through its investigation, the contracting officer made three salient conclusions about the alleged conflict of interest. First, the Navy determined that there was no evidence that Mrs. X participated in the instant procurement. AR, Tab 14 BCM Addendum, attach. 3, PCI Memo at 1777. In this regard, Mrs. X did not have access to source selection information concerning this procurement, nor was she involved in the acquisition planning for this effort.⁹ *Id.*

⁸ Mrs. X provides that she does not have hard copy materials in her home office. AR, Tab 14, BCM Addendum, attach. 3, PCI Memo, attach. 5 at 1834.

⁹ The contracting officer explains why this issue came to light only after a protest was filed:

The concern of impropriety was not a pre-award concern, since Ms. [X] did not have any role in the source selection process for the follow-on NIEF and the evaluation of proposals. Furthermore, the SSEB members were not given access to the cost proposals, and therefore, would not have known that Mr. [X] was listed as a proposed employee for McKean. The SSEB did not have any available information in the non-cost proposal documents provided for their review to know that Mr. [X] was either proposed or if he had any involvement with

at 1778. Second, while the contracting officer acknowledges that Mrs. X had access to KES's cost information under the incumbent contract, the contracting officer concluded that Mrs. X did not provide that information to Mr. X. *Id.* In support, the contracting officer relied on the declarations from Mr. and Mrs. X that provide, under penalty of perjury, that proprietary information was not disclosed, that Mrs. X followed proper protocols in handling information, and that Mr. X did not have access to Mrs. X's computer where this information was stored. *Id.* at 1778-1780. Accordingly, the contracting officer concluded that there was no evidence that Mrs. X improperly disclosed any confidential information to Mr. X. *Id.* Third, the contracting officer concluded that the specific information for which Mrs. X had access, *i.e.*, historical pricing information from KES's incumbent contract, would not have provided a material competitive advantage to McKean in light of the RFP's specific terms. In this regard, the RFP established the level of effort and labor categories, so the only applicable input from offerors were labor rates and indirect rates. The contracting officer determined that KES's incumbent pricing information would have been of limited utility because the vast majority of McKean's labor rates were based on certified payroll data for McKean's current employees, and McKean's proposed indirect rates were its current approved provisional billing rates approved by the Defense Contract Audit Agency (DCAA) on January 15, 2021, prior to issuance of the solicitation. *Id.* at 1781.

Contracting agencies are to avoid even the appearance of impropriety in government procurements. FAR 3.101-1; *Perspecta Enter. Sols., LLC, B-418533.2 et al.*, Jun. 17, 2020, 2020 CPD ¶ 213 at 7. In setting out the standards of conduct that apply to the award of federal contracts, the FAR provides that:

Government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships.

FAR 3.101-1; *Lockheed Martin Corp.*, B-295402, Feb. 18, 2005, 2005 CPD ¶ 24 at 8 (explaining that where the record establishes that a conflict exists, we will presume that the protester was prejudiced, unless the record establishes the absence of prejudice).

McKean's proposal. When McKean received the follow-on NIEF contract award Ms. [X] had a discussion with her supervisor that her role would need to change in order to avoid any [personal conflict of interest] that could arise in administration of the follow-on contract, which her husband would be employed under.

AR, Tab 14, BCM Addendum, attach. 3, PCI Memo at 1778.

In our view, the facts here do not establish any impropriety requiring the exclusion of the awardee, or otherwise reflect that the alleged conflict prejudiced the protester. That is, we do not find that the facts reasonably suggest that the conduct of the procurement and the award decision were tainted by the disclosure of competitively useful information. In this instance, the agency's investigation sufficiently rebuts the protester's allegation of the appearance of impropriety, and sufficiently demonstrates that KES's proprietary or otherwise competitively useful information was not disclosed.

First, KES does not dispute the investigation's finding that Mrs. X was not involved in the instant procurement or otherwise had access to associated procurement materials. Indeed, the record demonstrates that while Mrs. X was a COR on the incumbent contract, she was not involved in any acquisition planning, development of requirements, or evaluation of proposals for this effort; she was effectively firewalled from that information and had no potential access to files or documents for this procurement. AR, Tab 14, BCM Addendum, attach. 3, PCI Memo at 1777-1778. This fact distinguishes the instant protest from several decisions KES relies on to suggest that the mere appearance of a conflict should be sufficient to sustain the protest. See e.g., *Asia Resource Partners K.K.*, B-400552, Nov. 5, 2008, 2008 CPD ¶ 201 at 3 (finding reasonable agency's exclusion of offeror to avoid the appearance of impropriety where contracting officer--who was married to the president of the offeror's firm--had "access to shared computer storage drives and databases 'that contain significant nonpublic information on prospective and current acquisitions.'"); *Childers Service Center*, B-246210, B-246210.3, Jun. 17, 1992, 92-1 CPD ¶ 524 (finding agency's decision to terminate awarded contract reasonable where the agency COR--who was married to an employee of the awardee--worked on the protested-procurement and had access to the government estimate).

Second, despite the protester's suggestion that our Office should assume competitively useful information was disclosed, the facts in the record suggest otherwise. Again, both Mr. and Mrs. X provided declarations, under penalty of perjury, explaining that Mrs. X never provided KES's information to Mr. X, and Mr. X never received that information from Mrs. X (either directly or by accessing her systems). AR, Tab 14, BCM Addendum, attach. 3, PCI Memo at 1778-1780; PCI Memo, attach. 5, at 1834 ("I have never disclosed any third party proprietary information, like KES or its subcontractors' labor rates, or any other financial or contract information with Mr. [X]."); attach. 6 at 1837 ("[S]he has never shared with me any proprietary or sensitive information of a contractor that she oversees, including KES."). Mrs. X also provides that she properly safeguarded her systems and that Mr. X did not have access to her computer. *Id.* at 1838; PCI Memo, attach. 5 at 1834 ("My government computer requires a CAC to log in and Mr. X does not have access to my computer. [...] When I am not in front of my computer, the CAC is in a secure location."); attach. 6 at 1838 ("I have never accessed my wife's Navy computer or work files at any time. [...] I cannot and have not ever accessed any of her work files, including any files related in any way to KES's incumbent contract or proposal submitted in response to the Solicitation. I do not possess any of her passwords or credentials for her Navy computer, databases, files,

etc.”).¹⁰ The record demonstrates that Mrs. X did not share or otherwise disclose competitively useful information with her husband, Mr. X.¹¹

Even assuming, for the sake of argument, that both Mr. and Mrs. X were less than candid in their declarations, and KES’s cost information was disclosed, we believe the contracting officer reasonably concluded that the likelihood of competitive harm, in this instance, is minimal.¹² As noted above, this was a cost-reimbursement contract where the Navy conducted a cost realism analysis. RFP at 0124. For the purpose of the cost evaluation, however, the solicitation required offerors to propose staffing consistent with the RFP’s stated labor categories and to use the level of effort (number of labor hours) set forth in the solicitation. *Id.* at 0110 (providing labor categories, and levels of effort

¹⁰ To the extent the protester argues the Navy’s finding that Mrs. X did not share KES’s proposal information with Mr. X is unreasonable because that conclusion rests on “declarations from the two conflicted individuals themselves[,]” we disagree. Comments at 10. The protester cites no legal authority to support its conclusion that declarations are somehow inherently unreliable. And specifically here, the Navy’s underlying conclusions are buttressed by the declaration of an agency official, who is presumed to act in good faith. See *Silynx Communications, Inc.*, B-310667, B-310667.2, Jan. 23, 2008, 2008 CPD ¶ 36 at 8. KES presents no argument or evidence to question the veracity of Mrs. X’s statements.

¹¹ KES also argues that the appearance of impropriety is “exacerbated further by the lack of candor” on the part of Mr. and Mrs. X, and McKean. Comments at 7. In this regard, the protester alleges that Mr. X and McKean “were obligated” by the solicitation to inform the Navy of the potential conflict, and that Mrs. X did not reveal to the contracting officer that her husband’s company was submitting a proposal for the Navy’s requirement. *Id.* We note that the RFP did not require McKean to disclose such information. See RFP at 0119 (concerning organizational conflicts of interest, the RFP stated that “prospective offerors are requested to furnish with their proposals information that may have a bearing on any existing or potential conflict of interest.”).

In this regard, the RFP section cited by the protester specifically referred to potential organizational conflicts of interest arising under FAR subpart 9.5. The alleged personal conflict of interest involving Mrs. X is not an organizational conflict of interest arising under the scope of FAR subpart 9.5. Second, Mrs. X did disclose to the agency her husband’s employer on her OGE 450 form. See AR, Tab 14, BCM Addendum, attach. 3, PCI Memo, attach. 5 at 1834. Moreover, as noted by the contracting officer, “[t]he concern of impropriety was not a pre-award concern, since Ms. [X] did not have any role in the source selection process for the follow-on NIEF and the evaluation of proposals.” *Id.*, attach. 3, PCI Memo at 1778. The record does not reflect a lack of candor by Mr. or Mrs. X, or McKean.

¹² We note that government officials are presumed to act in good faith and we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. See *Silynx Communications, Inc.*, *supra* at 8. Again, the protester presents no evidence or allegation that Mr. or Mrs. X’s declarations were untrue.

for those categories, across the base and option periods). Thus, with the labor categories and level of effort established by the solicitation, the solicitation did not invite a unique staffing solution for the purpose of the cost evaluation.

In terms of direct labor rates, the record shows that McKean (inclusive of its subcontractors) proposed 185 named employees across the solicitation's 34 labor categories. For all but three of these employees, McKean provided the actual salaries of current employees to substantiate the proposed labor rates. AR, Tab 4, McKean's Proposal at 1039-1054; see *also* AR, Tab 10, BCM at 1519-1525. For the remaining three personnel, who were proposed as contingent employees, McKean provided letters of intent and contingent salary information. AR, Tab 4, McKean's Proposal at 766-832. Concerning indirect rates, the record reflects that McKean's proposed indirect rates match the provisional billing rates approved by DCAA in January 2021. AR, Tab 14, BCM Addendum, attach. 3, PCI Memo at 1781.

Accordingly, even assuming, contrary to the evidence in the record, that (a) Mr. X did in fact have input to McKean's historical cost information, and (b) Mrs. X divulged KES's cost information to Mr. X and McKean, the possibility of prejudice here is remote. That is, under the unique facts here, the contracting officer had a reasonable basis to conclude that McKean's ability to benefit from KES's cost data was minimal given that it used actual salary information for 98 percent of its offered employees, McKean's indirect rates are those that were verified by DCAA before the solicitation was even issued, and Mr. X declared that he did not assist with the preparation of McKean's cost proposal. On this record, we do not have reason to question the reasonableness of the contracting officer's conclusion that the specific information at issue was not competitively useful in light of the RFP's specific structure. For the reasons stated above, we do not find a basis to sustain KES's protest allegation.

Cost Realism Evaluation

The protester also challenges the agency's cost realism evaluation, advancing two principal arguments. Protest at 27-32; Comments at 12-22; Supp. Comments at 14-19. First, KES contends the agency's selected methodology for upwardly adjusting McKean's direct labor rates did not comport to the solicitation's stated criteria. Specifically, the protester alleges that the agency was required to upwardly adjust the proposed rates for the awardee's personnel--not based in San Diego--to higher salary rates based on survey data for San Diego, as opposed to using an averaged locality rate based on the offerors' proposed salaries for personnel based in San Diego. Had the Navy conducted its cost evaluation of McKean's proposal in a manner consistent with the terms of the RFP, KES argues, the protester's proposal would have a lower evaluated cost than McKean's proposal. Second, the protester argues the Navy's decision not to rescore the awardee's technical proposal was unreasonable, where, in KES's view, McKean's cost proposal demonstrated a lack of understanding of the requirements of the solicitation.

When an agency evaluates a proposal for the award of a cost-reimbursement contract or task order, the 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 15.404-1(d), 16.505(b)(3); *AECOM Mgmt. Servs., Inc.*, B-418467 *et al.*, May 15, 2020, 2020 CPD ¶ 172 at 4. Consequently, the agency must perform a cost realism analysis to determine the extent to which the offeror's proposed costs are realistic for the work to be performed. FAR 15.404-1(d)(1); see *Noridian Admin. Servs., LLC*, B-401068.13, Jan. 16, 2013, 2013 CPD ¶ 52 at 4-5. An agency is not required to conduct an in-depth cost analysis, or to verify each and every item in assessing cost realism; rather, the evaluation requires the exercise of informed judgment by the contracting agency. See *Cascade Gen., Inc.*, B-283872, Jan. 18, 2000, 2000 CPD ¶ 14 at 8; see FAR 15.404-1(c). Our review of an agency's cost realism evaluation is limited to determining whether the cost analysis is reasonably based and not arbitrary. *Jacobs COGEMA, LLC*, B-290125.2, B-290125.3, Dec. 18, 2002, 2003 CPD ¶ 16 at 26. A protester's disagreement with the agency's judgment, without more, does not provide a basis to sustain the protest. *Imagine One Tech. & Mgmt., Ltd.*, B-412860.4, B-412860.5, Dec. 9, 2016, 2016 CPD ¶ 360 at 14-16.

Offerors were required to prepare a cost proposal that identified various cost elements, such as direct labor, fringe benefits, overhead, and subcontract costs. RFP at 0108-0109. The solicitation explained that the purpose of the Navy's cost evaluation was to:

(a) to verify the offeror's understanding of the requirements; (b) to assess the degree to which the cost/price proposal reflects the approaches and/or risk assessments made in the proposal as well as the risk that the offeror will provide the supplies or services for the offered prices/cost; and (c) assess the degree to which the cost reflected in the cost/price proposal accurately represents the work effort included in the proposal.

RFP at 0124. As relevant here, concerning direct labor costs, offerors were instructed to identify "the various labor categories and individual names (if known) intended for use under this contract including the number of labor hours, hourly labor rates, and total cost for each labor category proposed for each year of the contract."¹³ *Id.* at 0108. Offerors were further instructed to not submit average or composite labor rates for named individuals. *Id.* The solicitation explained that direct labor rates that were not based on actual labor rates, and were lower than the Economic Research Institute (ERI) rates identified in the RFP, would be adjusted upward to the ERI rate during the Navy's cost realism analysis. *Id.* at 0108, 0124.

In evaluating McKean's proposed direct labor rates, the Navy determined that the proposed labor rates for named individuals whose place of performance was San Diego

¹³ The solicitation provided 34 labor categories, and an estimated level of effort for each labor category, that offerors were to utilize in proposing labor costs. RFP at 0110-0111.

(and whose labor rates were substantiated by payroll records), were realistic and reasonable.¹⁴ AR, Tab 10, BCM at 1502. However, the agency concluded that McKean's proposed labor rates for named individuals, whose rates were substantiated by payroll records, but whose place of work performance was *not* San Diego, were not realistic. *Id.* In this regard, the Navy noted that the "RFP indicated most of the work was to be performed in San Diego, CA, therefore the Government evaluated whether the substantiated actual rates were realistic for work to be performed in San Diego." *Id.*

Accordingly, the agency "utilized proposed rates for non-key personnel based on work performed in San Diego to find the average (mean) San Diego Rate for each labor category" where "[t]he pool of rates was composed of all San Diego based direct labor rates proposed by both of the offerors as well as the subcontractors proposed thereunder." *Id.* As such, the Navy determined that "[a]ll proposed rates that were equal or greater than the average San Diego rate for each labor category were considered realistic and reasonable[.]" whereas "[a]ll rates falling below the average San Diego rate were adjusted upward" to the lower of (a) the average proposed direct labor rate, or (b) the ERI rate identified in the RFP. *Id.* In total, the Navy upwardly adjusted the proposed direct labor rates for 84 of McKean's employees. *Id.* at 1515.

KES objects to the methodology utilized by the Navy, arguing that the Navy was required to utilize the ostensibly higher ERI rates. The gravamen of the protester's allegation is that McKean proposed named personnel whom the awardee did not intend to perform on the contract. Comments at 18; Supp. Comments at 19. In this regard, KES notes that the solicitation permitted offerors to propose actual labor rates for named individuals if, and only if, they intended to perform on the contract. See RFP at 0108. On the other hand, the RFP stated that offerors proposing direct labor rates that were not based on actual labor rates would be adjusted to the ERI rate. According to the protester, because the "Navy's own cost realism analysis concluded that those rates [proposed by McKean] were for personnel who were not 'actually' intended for use under the contract," the solicitation required an upward adjustment using the ERI rate, not the agency-created average San Diego rate. Comments at 18. KES further contends that the awardee's "intent is obvious" that it did not anticipate using the named individuals in performing this contract. Supp. Comments at 18.

The edifice of KES's argument rests on a flawed understanding of the facts in the record. Contrary to the protester's contention, the record does not demonstrate that the Navy concluded that McKean proposed personnel it did not intend to perform on the contract. Instead, during its cost evaluation, the Navy sought clarification from McKean about the location of the individuals named in the firm's proposal. See AR, Tab 8, Clarification Email at 1465. In response, for these named individuals, McKean provided

¹⁴ McKean and its subcontractors proposed 185 named employees across the solicitation's 34 identified labor categories. The awardee's direct labor rates were developed using actual payroll data for the named individuals, save three contingent employees, for which contingent salaries and letters of intent were provided. See AR, Tab 4, McKean's Proposal at 1039-1054; see also AR, Tab 10, BCM at 1519-1525.

the “location for where work is being performed for the rates submitted[,] by individual[,] to support the Government’ cost realism analysis.” *Id.* at 1464. The agency acknowledged that not all of the payroll information provided represented employees who worked within San Diego, and accordingly, the Navy “believed McKean’s labor rates for non-San Diego employees may not be realistic[.]” COS/MOL at 9; see AR, Tab 10, BCM at 1514-1515. However, the mere fact that the agency determined that McKean’s proposed rates for individuals then-performing outside of San Diego were unrealistic, given the amount of work the agency believed would be performed in San Diego, does not change the fact that the awardee’s labor rates were based on specifically identified personnel and were consistent with McKean’s proposed approach to perform work at its on-site location outside of the San Diego area.

Contrary to the protester’s interpretation, the RFP was silent as to how the agency would make adjustments for labor rates based on specifically identified personnel; ERI-based adjustments were required only for direct labor rates that were not based on actual labor rates. See RFP at 0108. Here, the agency “utilized proposed rates for non-key personnel based on work performed in San Diego to find the average (mean) San Diego rate for each labor category” where “[t]he pool of rates was composed of all San Diego based direct labor rates proposed by both of the offerors as well as the subcontractors proposed thereunder.” AR, Tab 10, BCM at 1502. Our Office has concluded that an agency’s cost realism analysis need not achieve scientific certainty; rather, 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 as of the time of its evaluation. *SGT, Inc.*, B-294722.4, July 28, 2005, 2005 CPD ¶ 151 at 7. We find reasonable the agency’s methodology based on consideration of the actual rates of personnel based in San Diego.

The protester also challenges the agency’s failure to reevaluate McKean’s technical proposal following the Navy’s cost evaluation. Protest at 29-31; Comments at 19-22; Supp. Comments at 19-22. As noted above, the RFP explained the cost evaluation may result in cost adjustments, and that “unrealistic cost proposals may result in a re-evaluation and concurrent rescoring of technical proposals.” RFP at 0124. In KES’s view, McKean’s cost proposal, which offered [DELETED] of its labor rates from individuals outside of San Diego, represented a lack of understanding of where most of the contract would be performed, and reflected an inability to perform the contract. Accordingly, the protester contends the Navy should have rescored the awardee’s technical proposal and assigned deficiencies or significant weaknesses to its proposed solution to the technical approach.

Central to the protester’s argument is where the Navy’s requirement will be performed. As noted above, the Navy sought to award a single IDIQ contract for engineering support services. RFP at 0012. The contractor, in response to issued task orders, will need to meet the requirements through performance “at the contractor’s facilities and/or onsite at government facilities and on travel in support of designated activities.” *Id.* at 0034. The RFP further provided because the Navy’s leadership is located in San

Diego, the majority of the production, PITCO, and government acceptance testing will be required to be supported within 10 miles of Navy's location. *Id.* However, the RFP also stated that "[t]he majority of engineering support is expected to be off site at the contractor facility." *Id.* The solicitation also explained that for environmental qualification testing lab support, the "Contractor will primarily conduct required work within the immediate San Diego geographical area; however, as detailed per individual task order, other locations outside of the San Diego area may be required." *Id.* at 0028. The protester also points to the proposal submission instructions for cost proposals as supposedly designating a place of performance. The RFP provided that "[f]or bidding/proposal purposes, those offerors with different indirect rates for Government and contractor facilities" were required to propose "rates associated with performance at Government facilities in San Diego for 70% of the level of effort for each labor category" and "rates associated with performance at contractor facilities) for 30% of the level of effort for each labor category." *Id.* at 0109.

In the protester's view, this information, taken together, suggests that the place of performance for the vast majority of the Navy's requirement is San Diego. As such, KES argues, because McKean offered [DELETED] of its direct labor rates for individuals outside the San Diego area, the awardee could not have understood where the work would be performed. Therefore, the protester claims the Navy acted unreasonably in failing to rescore McKean's technical proposal. Comments at 22 ("[I]t was unreasonable for the Navy to realize during the cost evaluation that McKean had unrealistically proposed that [DELETED] of its total labor hours were to be performed by individuals located outside the San Diego area, yet not go back and adjust McKean's technical proposal to account for this massive misunderstanding of where the work was to be performed and how the work had to be staffed.").

We find no merit in the protester's argument that the agency acted unreasonably in failing to reevaluate McKean's technical proposal. As a preliminary matter, under the terms of the solicitation, the reevaluation of an offer's technical proposal following the Navy's cost evaluation was discretionary, not mandatory. See RFP at 0124 ("In addition to easily identifiable cost adjustments, unrealistic cost proposals may result in a re-evaluation and concurrent rescoring of technical proposals. Such re-evaluation based on cost or realistic cost analysis could negatively impact the technical rating and ranking of the proposal."). Here, while the Navy made adjustments to McKean's proposed direct labor rates for identified personnel then outside of the San Diego area--again, McKean supplied current payroll data to substantiate its direct labor rates, and some of those personnel were outside the San Diego area--the record reflects the agency determined that those cost adjustments did not reflect a lack of understanding of the Navy's requirements. AR, Tab 14, BCM Addendum at 1661-1662 ("Furthermore, the adjustment does not indicate a lack of understanding of the requirements or a concern regarding performance as based upon their performance in the non-costs factors they understand the work and have done similar work before and well.").

Contrary to the protester's contention, this conclusion is reasonably supported by the record. Indeed, while the record does reflect that the agency anticipated that a majority

of the performance (and the contracting officer understood it to be closer to 70 percent) would occur in San Diego, the solicitation did not expressly provide a required number or percentage of personnel required to be located in San Diego. Moreover, the only location information provided by McKean in its cost proposal concerned the information substantiating its offered direct labor rates (*i.e.*, payroll information), showing the current locations of McKean's personnel; the agency did not view this information to suggest the awardee would be unable to perform San Diego-based aspects of the contract. Instead, the agency determined that McKean's proposal offered the level of effort and staffing required by the terms of the solicitation. *Id.* at 1661 (noting that the Navy had "verif[ied] that each of the prime contractors and all subcontractors proposed hours that added up to the total level of effort identified within the RFP per labor category and overall."). On this record, especially in light of the agency's affirmative determination that its cost adjustments to McKean's proposal did "not indicate a lack of understanding of the requirements or a concern regarding performance[,] " we cannot find the agency's decision not to rescore McKean's technical proposal unreasonable. *Id.* at 1661-1662.

The protest is denied.

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