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Decision

Matter of: American Electronics, Inc.

File: B-421021; B-421021.2; B-421021.3

Date: December 5, 2022

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Louis A. Chiarella, Esq., Kyle E. Gilbertson, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's evaluation of the protester's technical proposal is denied where the record shows that the evaluation and selection decision were reasonable and consistent with the terms of the solicitation.
2. Protest challenging the agency's evaluation of the protester's past performance is denied where the record reflects that the agency's evaluation was reasonable and consistent with the stated evaluation criteria, and fully documented.
3. Protest challenging the agency's cost realism evaluation of the protester's proposal is denied where the record demonstrates the agency's conclusions were reasonable.

DECISION

American Electronics, Inc. (Amelex), of California, Maryland, protests the award of a contract to Serco, Inc., of Herndon, Virginia, under request for proposals (RFP) No. N00019-21-R-0027, issued by the Department of the Navy, Naval Air Systems Command (NAVAIR), for program management knowledge-based services in support of the F-35 fighter aircraft Lightning II Joint Program Office (JPO). Amelex alleges that the agency's evaluation of the offeror's proposal and resulting award decision were improper.

We deny the protest.

BACKGROUND

The F-35 Lightning II is “the next generation strike fighter bringing cutting-edge technologies to the battle-space of the future.” Agency Report (AR), Tab 1, RFP, Statement of Work (SOW) at 15.¹ The F-35 JPO is a joint, multi-national organization that supports the development and deployment of the F-35 aircraft to meet the operational needs of the United States Air Force, Navy, Marine Corps, as well as the F-35’s international partners. *Id.* In furtherance thereof, the SOW here addresses the need to provide the F-35 JPO with program management knowledge-based services that support the full acquisition lifecycle of the F-35 program, and which generally fall into three labor categories: program manager, program analyst, and financial analyst. *Id.*

The RFP was issued on August 13, 2021, pursuant to the procedures of Federal Acquisition Regulation (FAR) part 15. RFP at 1²; Contracting Officer Statement and Memorandum of Law (COS/MOL) at 4. The solicitation contemplated the award of a single indefinite-delivery, indefinite-quantity (IDIQ) contract, under which cost-plus-fixed-fee task orders could be placed, for a 5-year ordering period.³ RFP at 41. In general terms, the RFP required the contractor to provide a total of 1,745,280 hours (or 909 full-time equivalents (FTE)) in specified labor categories in program management support. RFP at 108-110; see also COS/MOL at 9 n.5 (“[t]he Solicitation . . . set [a] predetermined labor mix and hours”).

The RFP established that contract award would be made on a best-value tradeoff basis, based on three evaluation factors in descending order of importance: technical; past performance; and price/cost (cost).⁴ RFP at 112-113. The technical factor consisted of three equal elements: understanding of the work; key personnel; and management approach. *Id.* at 113. The non-cost factors, when combined, were significantly more important than cost. *Id.*

Nine offerors, including Amelex (the incumbent) and Serco, submitted proposals by the September 13 proposal closing date. An agency source selection evaluation board (SSEB) evaluated offerors’ non-cost proposals using adjectival rating schemes that

¹ Unless otherwise noted, references to the page numbers of documents in the agency report are to the Adobe PDF document page numbers.

² The solicitation was subsequently amended six times. All citations are to the final amended version of the solicitation.

³ The IDIQ contract’s guaranteed minimum amount was \$10,000, and the maximum order amount was “the total contract value,” or “contract ceiling value.” RFP at 43, 63.

⁴ The RFP also established that proposals would first be evaluated, on a pass/fail basis, for the required facility security clearance, and offerors that did not provide documentation showing possession of the requisite clearance at time of proposal submission would not be evaluated further. RFP at 112.

were set forth in the solicitation as follows: outstanding, good, acceptable, marginal, or unacceptable for the technical factor; and substantial confidence, satisfactory confidence, neutral confidence, limited confidence, or no confidence for the past performance factor. RFP at 116-118. The SSEB did not rate cost proposals adjectively, but assessed offerors' proposed costs for reasonableness and realism. *Id.* at 115.

By February 24, 2022, the SSEB completed its evaluation of offerors' proposals, with the final evaluation ratings and evaluated costs for the Serco and Amelex proposals as follows:

	Serco	Amelex
Technical	Outstanding	Good
Past Performance	Substantial Confidence	Satisfactory Confidence
Total Evaluated Cost	\$185,270,290	\$171,163,354

AR, Tab 2, SSEB Report at 22, 99; Tab 3, SSEB Briefing at 3. The evaluators also identified strengths and weaknesses, or made other narrative findings, in support of the ratings assigned.

After completing its evaluation, the SSEB provided its evaluation results to an agency source selection advisory council (SSAC). The SSAC performed a comparative assessment of the offerors' proposals and recommended award to Serco. AR, Tab 4, SSAC Proposal Analysis Report (PAR) at 1-37.

On August 4, the agency source selection authority (SSA) received and reviewed the evaluation findings and recommendations of the SSEB and SSAC. COS/MOL at 13. The SSA found, when comparing proposals, that Serco was superior to Amelex under both the technical and past performance evaluation factors, "which are significantly more important than [cost]." AR, Tab 5, SSDD at 4. While recognizing Amelex's cost advantage (of 8.10%), the SSA ultimately concluded, "the lower risks associated with Serco's performance along with the longer-term benefits its proposal provides are worth the [cost] differential," such that Serco's proposal represented the overall best value to the agency. *Id.*

On September 1, after having received notice of the award to Serco and a post-award debriefing, Amelex filed its protest with our Office.

DISCUSSION

Amelex raises several challenges to the agency's evaluation of the firm's own proposal. The protester first contends the Navy's evaluation of Amelex's technical proposal was improper. Amelex next alleges the evaluation of its past performance was unreasonable. Finally, Amelex asserts the agency's cost realism evaluation was

erroneous.⁵ Had the Navy evaluated its proposal properly, Amelex argues, it would have instead been selected for contract award. Protest at 7-13. We have considered all of the arguments and issues raised by Amelex, and while we do not address them all, we find no basis on which to sustain the protest.

Technical Evaluation

Amelex protests the evaluation of the firm's technical proposal. Specifically, the protester alleges that the agency improperly assessed two weaknesses against its proposal under the first technical element, understanding of the work. *Id.* at 7-8. The Navy contends that the assessed weaknesses were reasonable and the evaluation of Amelex's technical proposal was consistent with the stated evaluation criteria. COS/MOL at 22-26.

In reviewing a protest challenging an agency's evaluation of proposals, our Office will not reevaluate proposals nor substitute our judgment for that of the agency regarding a proposal's relative merits, as the evaluation of proposals is a matter within the agency's discretion. *Peraton, Inc.*, B-417088, B-417088.2, Feb. 6, 2019, 2019 CPD ¶ 190 at 5; *Del-Jen Educ. & Tng. Grp./Fluor Fed. Sols. LLC*, B-406897.3, May 28, 2014, 2014 CPD ¶ 166 at 8. Rather, we will review the record to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations, and adequately documented. *Mgmt. Sys. Int'l, Inc.*, B-409415, B-409415.2, Apr. 2, 2014, 2014 CPD ¶ 117 at 5. A protester's disagreement with the agency's evaluation judgments, without more, is insufficient to establish that an evaluation was improper or lacked a reasonable basis. *Wolverine Tube Inc. d/b/a Wolverine Indus.*, B-418339.4, B-418339.5, July 26, 2022, 2022 CPD ¶ 219 at 4-5.

Under the "understanding of the work" technical element, the RFP required offerors to "[p]rovide an Implementation Plan containing detailed step-by-step procedure and methodology to be used in accomplishing each of the tasks listed" in SOW paragraph 3.0. RFP at 101. These SOW tasks included task 3.1.6, which requires the

⁵ Amelex also alleged that Serco should be disqualified from the competition because Serco violated the terms of a subcontract agreement between the two parties. According to Amelex, the contract precluded Serco from "soliciting or hiring Amelex personnel" prior to the end of Amelex's incumbent contract. Protest at 11. Amelex claimed that Serco's proposal had failed to disclose all relevant facts regarding the agreement that affected Serco's ability to implement a smooth workplace transition. We found this aspect of Amelex's protest--centered upon a contractual dispute between private parties--was speculative and failed to state a valid basis of protest. Ruling on Partial Dismissal Request, Sept. 22, 2022, at 1. As such, the allegation was dismissed prior to the requirement for the submission of the agency report. See *LightBox Parent, LP*, B-420032.2 *et al.*, Feb. 24, 2022, 2022 CPD ¶ 63 at 5 (finding that disputes between private parties that do not involve improper government action fail to state cognizable grounds of protest).

contractor to support the Chief Management Office's (CMO's) preparation of an enterprise cost estimate, and task 3.10.3, requiring the contractor to assist the Combat Data Systems (CDS) Program Management Office (PMO) in providing verification and validation systems. *Id.* at 16, 23. According to the RFP, the Navy would "assess the degree of the Offeror's understanding of the work requirements and assess the offeror's capability to meet contracts requirements based upon the offeror's response." *Id.* at 113.

The Navy identified two weaknesses in Amelex's proposal under this technical element. First, for task 3.1.6, the Navy found that "[n]o detailed step-by-step procedures and methodology [was] provided which would be used in accomplishing support for the CMO in providing the Enterprise Cost Estimate." AR, Tab 2, SSEB Report at 23. In assessing this weakness, the SSEB also found that Amelex's proposal only described, in general terms, how the firm planned to "work with the F-35 Cost Team to collect cost estimates." *Id.* at 23-24 (quoting AR, Tab 6, Amelex Proposal, Vol. I, Tech. Proposal at 10). The SSEB concluded that Amelex's response "merely repeats the JPO timelines for accomplishing work," adding that "[f]or such a highly visible aspect of the F-35 Program, this generic response shows the Offeror may not understand the importance of SOW Task 3.1.6." AR, Tab 2, SSEB Report at 24.

Second, for task 3.10.3, the Navy found that Amelex did not "provide detailed step-by-step procedures and methodology which would be used in accomplishing support for the Combat Data Systems PMO." *Id.* For instance, the evaluators noted that while Amelex's proposal stated that integrating verification and validation (V&V) priorities "will require knowledge of the F-35 Build and V&V Process," the proposal did not "provide further detail on 'how' they would acquire the knowledge or 'how' they would apply it." *Id.* (quoting AR, Tab 6, Amelex Proposal, Vol. I, Tech. Proposal at 29). Based on these "generic" statements, the SSEB determined, "it is difficult to determine if [Amelex] fully understands the work, the importance of those tasks to the JPO's mission, and the complexity to successfully perform these specific requirements; thus, this weakness increases the performance risks and the need for Government oversight." AR, Tab 2, SSEB Report at 24.

The SSAC affirmed the SSEB's concerns "with Amelex's technical approach related to the lack of adequate details in the Offeror's approach and methodology." AR, Tab 4, SSAC PAR at 20. The SSAC also found this lack of detail to be "particularly disconcerting since Amelex is the incumbent contractor and should have significant insight into both the requirements and importance associated with the SOW tasks for CDS and enterprise cost estimating, two critically important SOW tasks." *Id.* at 35. After conducting an "independent assessment" of evaluation findings and analysis, the SSA agreed with the evaluators' findings and similarly concluded that Amelex's proposal "did not provide a step-by-step methodology--but rather only repeated the verbiage from the RFP--for two critical tasks: CDS and enterprise cost estimating." AR, Tab 5, SSDD at 2-3. Despite these two weaknesses, the Navy nevertheless decided that Amelex's proposal deserved an overall technical rating of good. AR, Tab 4, SSAC PAR at 4; AR, Tab 5, SSDD at 3.

Amelex does not dispute that the RFP required an offeror to provide a “step-by-step” methodology for accomplishing these two SOW tasks, and the protester essentially acknowledges that its proposal failed to do so in its initial protest. Protest at 8 (claiming its task 3.1.6 description, “even if not ‘detailed step by step’ cannot be a weakness,” and that its task 3.10.3 description “remained at a level commensurate with the solicited support.”). Rather the protester simply argues that these two weaknesses “are not in any critical areas.” *Id.* at 7. Amelex, however, fails to point to anything in the solicitation to substantiate the protester’s opinion that these two tasks should have been evaluated as any less “critical,” or otherwise differently, than the other SOW tasks.⁶

Amelex’s argument--ostensibly based on its experience as the incumbent--reflects the protester’s disagreement with the agency’s conclusions and does not, by itself, demonstrate that the agency’s evaluation was unreasonable. It is an offeror’s responsibility to submit a well-written proposal, with adequately detailed information that clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. *Jacobs Tech., Inc.*, B-411784, B-411784.2, Oct. 21, 2015, 2015 CPD ¶ 342 at 8. Moreover, as we have consistently explained, “[a]n offeror’s technical evaluation is dependent upon the information furnished; there is no legal basis for favoring a firm with presumptions on the basis of its incumbent status.” *HealthStar VA, PLLC*, B-299737, June 22, 2007, 2007 CPD ¶ 114 at 2.

The record reflects that the Navy reasonably evaluated Amelex’s technical proposal consistent with the stated evaluation criteria, and we have no basis to disturb the Navy’s reasoned judgments. This allegation is denied.⁷ *Am. Sys. Corp.*, B-292755,

⁶ In its comments to the agency report, the protester now claims that the firm indeed “provided a step by step methodology” for the two tasks. Comments & Supp. Protest at 4. Amelex, however, provides no support for this contention other than simply citing to the corresponding task sections of its proposal, without any further explanation as to how its proposal provided the level of detail required by the RFP. In any event, as Amelex could have alleged in its initial protest that it provided this “step by step methodology,” yet failed to do so, this argument is untimely. Our regulations do not contemplate the piecemeal presentation or development of protest issues through later submissions citing examples or providing alternate or more specific legal arguments missing from earlier general allegations of impropriety. *LOGMET LLC*, B-420507, May 6, 2022, 2022 CPD ¶ 112 at 3 n.5. There is no evidence that this argument could not have been timely asserted in the initial protest. Accordingly, this allegation is untimely and will not be considered. *Id.*; 4 C.F.R. § 21.2(a)(2).

⁷ In a supplemental protest, Amelex alleges the SSAC unreasonably rejected a strength the SSEB had earlier assessed in Amelex’s proposal “for having current access to all JPO facilities.” Comments & Supp. Protest at 1-2 (quoting AR, Tab 4, SSAC PAR at 17). The record reflects that the SSAC declined to assess the same strength identified by the SSEB because the “incumbent and new vendors alike will undergo the same process of requesting and receiving facility access (badges, CACs, etc.) as part of

B-292755.2, Dec. 3, 2003, 2003 CPD ¶ 225 at 6 (finding that “the agency reasonably determined that [protester’s] written processes lacked step-by-step detail”).

Past Performance Evaluation

Amelex also challenges the agency’s evaluation of its past performance, arguing that the evaluation was unreasonable and inconsistent with the solicitation’s requirements.⁸ Protest at 12. The agency responds that the evaluation of Amelex’s past performance was reasonable and consistent with the stated evaluation criterion. COS/MOL at 26-27.

An agency’s evaluation of past performance, which includes its consideration of the relevance, scope, and significance of an offeror’s performance history, is a matter of discretion which we will not disturb unless the assessment is unreasonable or inconsistent with the solicitation criteria. *BillSmart Sols., LLC*, B-413272.4, B-413272.5, Oct. 23, 2017, 2017 CPD ¶ 325 at 4. Where 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. A protester’s disagreement with the agency’s judgment, without more, is insufficient to establish that an evaluation was improper. *WingGate Travel, Inc.*, B-412921, July 1, 2016, 2016 CPD ¶ 179 at 4-5.

The RFP instructed offerors to submit up to five past performance references. RFP at 104. The solicitation also advised that the Navy would evaluate the recency (*i.e.*, within 5 years of the solicitation’s issuance date), relevance, and quality of each offeror’s past performance to determine the agency’s level of expectation that the offeror would successfully perform the required effort. *Id.* at 114-115.

the contract transition so there is not a true benefit to the Government.” AR, Tab 4, SSAC PAR at 17. Here, Amelex challenges the SSAC’s substantive rationale for rejecting the strength identified by the SSEB. *Id.* While the protester argues otherwise, we find the SSAC’s evaluation to be reasonable and consistent with the terms of the solicitation, and that the SSAC had the discretion to reject the SSEB’s assessment of a strength. *PiperCoughlin, LLC*, B-414352.2, Apr. 17, 2018, 2018 CPD ¶ 143 at 5 (finding “source selection officials are not bound by the evaluation judgments of lower level evaluators; they may come to their own reasonable evaluation conclusions”). Accordingly, this allegation is also denied.

⁸ Amelex also claims that certain past performance information conveyed to it at the debriefing was incorrect. Protest at 12. To the extent the protester is asserting that the Navy’s evaluation was flawed because of potential errors in the debriefing, such arguments provide no basis to sustain the protest. As our Office has consistently stated, misstatements or errors in a debriefing are procedural matters that do not affect the validity of an otherwise reasonable award. See, e.g., *Lukos-VATC JV III, LLC*, B-418427.9, B-418427.11, Dec. 22, 2020, 2021 CPD ¶ 43 at 12 n.12.

Amelex provided five past performance references, including its incumbent F-35 program management support contract (Reference #1). AR, Tab 6, Amelex Proposal, Vol. II, Past Performance Proposal at 171-306. The SSEB, after finding all Amelex references to be recent, assessed Reference #1 as “relevant” and the remaining four references as “somewhat relevant.” AR, Tab 2, SSEB Report at 95-97. The evaluators thereafter found the quality of Amelex’s past performance references to be either “very good” or “exceptional,” even though, in more than one reference, the SSEB noted that Amelex had experienced challenges retaining a comprehensive workforce and, in one instance, the “vacancies resulted in gaps in coverage and inconsistent customer service.” *Id.* at 98-99. Based on an overall assessment of Amelex’s past performance references, the SSEB assigned Amelex a rating of “satisfactory confidence” (i.e., the government has a reasonable expectation that the offeror will successfully perform the required effort). *Id.* at 99-100. The SSAC and SSA subsequently accepted the SSEB’s evaluation of Amelex’s past performance, including the findings regarding vacancy and retention issues. AR, Tab 4, SSAC PAR at 26; Tab 5, SSDD at 3.

Amelex argues that it was improper for the agency to find that there were consistent personnel vacancies reflected in Amelex’s Contractor Performance Assessment Reporting System (CPARS) reports when Amelex’s last CPARS report for Reference #1 (for the period from September 26, 2020 to September 10, 2021) had no negative comments.⁹ Protest at 12. The Navy responds that, based on available CPARS reports gathered shortly after the RFP’s closing date, including five years of reports (from September 28, 2015 to September 25, 2020) for Reference #1, the personnel retention and vacancy problems identified by the evaluators were well-founded.¹⁰ COS/MOL at 28; see AR, Tab 2a, Amelex CPARS References at 1-42.

The record reflects that shortly after the RFP closing date, the agency collected all available CPARS reports for each of Amelex’s past performance references. COS/MOL at 28. The SSEB considered the available CPARS reports and reasonably concluded that more than one reference indicated Amelex had experienced challenges retaining a comprehensive workforce and, in one instance, the “vacancies resulted in gaps in coverage and inconsistent customer service.” AR, Tab 2, SSEB Report at 98-99. The SSAC and SSA made similar reasonable findings as part of their respective evaluations. AR, Tab 4, SSAC PAR at 25; Tab 5, SSDD at 3. In sum, while the protester takes issue

⁹ The record reflects that the CPARS report identified by the protester was issued on October 20, 2021, and would not have been within the Past Performance Information Retrieval System at the time the solicitation closed on September 13, 2021. Comments & Supp. Protest, exh. A, Amelex CPARS Report for Reference #1 (9/26/20 – 9/10/21) at 16.

¹⁰ The Navy also notes that despite having the opportunity, through the CPARS process, to dispute the negative comments in the CPARS reports for References #1-- including those comments regarding personnel vacancies--Amelex did not do so. COS/MOL at 28, *citing* AR, Tab 2a, Amelex CPARS References at 1-129.

with the agency's determination that the overall quality of Amelex's past performance suffered from "consistent personnel vacancies," we find this amounts to disagreement with the agency's evaluation judgments, which does not demonstrate that those judgments were unreasonable or otherwise provide a basis on which to sustain the protest. AR, Tab 5, SSDD at 3; *Computer Scis. Corp.*, B-409386.2, B-409386.3, Jan. 8, 2015, 2015 CPD ¶ 34 at 4.

Additionally, on November 6, Amelex filed a second supplemental protest asserting, for the first time, that the Navy should have obtained and considered Amelex's most recent CPARS reports, including for Reference #1, as part of its past performance evaluation. Supp. Protest at 1-2. The agency contends that this allegation is untimely. We agree.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. These timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without disrupting or delaying the procurement process. *Tyonek Eng'g & Agile Mfg., LLC*, B-419775 *et al.*, Aug. 2, 2021, 2021 CPD ¶ 263 at 8. These rules require that a protest based on other than alleged improprieties in a solicitation be filed no later than 10 days after the protester knew or should have known its basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2).

Here, Amelex filed its initial protest on September 1, 2022, challenging the Navy's evaluation of the firm's past performance. At the time it received the agency report on October 3, Amelex knew which CPARS reports the Navy had, and had not, considered when evaluating the protester's past performance. Amelex, however, did not raise the issue as part of its first supplemental protest filed on October 13. Instead, the protester waited until November 6 to raise the challenge in Amelex's second supplemental protest. As Amelex failed to assert this claim within 10 days of when the protester knew or should have known of the basis of protest, we find this to be a piecemeal presentation of issues and therefore untimely. *Verizon Bus. Network Servs., Inc.*, B-419271.5 *et al.*, Apr. 26, 2021, 2021 CPD ¶ 191 at 15 (finding "the later-raised allegations must independently satisfy our timeliness requirements since our regulations do not contemplate the piecemeal presentation or development of protest issues").

Cost Realism Evaluation

Amelex next alleges the agency's cost realism evaluation was improper. Specifically, the protester maintains that the Navy made unreasonable upward adjustments to Amelex's direct and indirect rates. Protest at 12-13. We disagree.¹¹

¹¹ We also note the Amelex protest fails to quantify what impact removing the challenged cost realism adjustments would have on its evaluated cost, *i.e.*, how it was competitively prejudiced by this alleged error. Protest, *passim*. The record reflects that the total cost realism adjustment--including those aspects of the agency's evaluation

When an agency evaluates proposals for the award of a cost-reimbursement contract, an offeror's proposed costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs for performance. FAR 15.305(a)(1); *ICI Servs. Corp.*, B-418255.5, B-418255.6, Oct. 13, 2021, 2021 CPD ¶ 342 at 15; *Logistics Mgmt. Inst.*, B-417601 *et al.*, Aug. 30, 2019, 2019 CPD ¶ 311 at 6. Consequently, an agency must perform a cost realism analysis to determine the extent to which an offeror's proposed costs are realistic for the work to be performed.¹² FAR 15.404-1(d)(1); *Solers Inc.*, B-409079, B-409079.2, Jan. 27, 2014, 2014 CPD ¶ 74 at 4. An agency's cost realism analysis requires the exercise of informed judgment, and we review an agency's judgment in this area only to see that the cost realism analysis was reasonably based and not arbitrary. *Tatitlek Techs., Inc.*, B-416711 *et al.*, Nov. 28, 2018, 2018 CPD ¶ 410 at 14. The analysis need not achieve scientific certainty; rather, the methodology employed must be reasonably adequate and provide some measure of confidence that the agency's conclusions about the most probable costs for an offeror's proposal are reasonable and realistic in view of other cost information reasonably available to the agency at the time of its evaluation. *Id.*

The RFP instructed offerors to provide sufficient information to support their proposed costs, as well as an "explanation of all ground rules and assumptions" on which the proposed costs were based. RFP at 105. Additionally, the solicitation provided the labor categories, proficiency levels, locations, and labor amounts (e.g., "Acquisition Management Analyst," "Senior" level, Arlington, Virginia, 27 FTEs) that offerors were required to use as part of their proposals. *Id.* at 109-110. The RFP also established that the agency would perform a cost realism analysis, and independently review and evaluate the specific elements of each offeror's proposed cost, to determine the most probable cost for each offeror's proposal.¹³ *Id.* at 115.

which Amelex does not dispute--was approximately \$4 million, or 3 percent, of Amelex's proposed cost. See AR, Tab 2, SSEB Report at 184. Thus, it is uncertain whether Amelex's challenge here was material to the Navy's selection decision. See *Fluor Intercontinental, Inc.--Advisory Opinion*, B-417506.14, Nov. 5, 2019, 2019 CPD ¶ 46 at 9 n.7 (finding a calculation error that decreased the awardee's evaluated price premium by 1 percent was not prejudicial to the protester).

¹² The end product of a cost realism analysis is typically the total estimated cost (often referred to as the "most probable cost" or "evaluated costs") that the agency realistically expects to pay for that offeror's proposed effort, and it is the estimated cost, and not the offeror's proposed cost, that must be the basis of the agency's source selection determination. *Innovative Test Asset Sols., LLC*, B-411687, B-411687.2, Oct. 2, 2015, 2016 CPD ¶ 68 at 14 n.19.

¹³ When conducting a cost realism analysis, agencies are generally required to also consider the realism of a firm's proposed costs in light of the firm's unique technical approach. *Logistics Mgmt. Inst.*, *supra* at 13; *Booz Allen Hamilton, Inc.*, B-412744, B-412744.2, May 26, 2016, 2016 CPD ¶ 151 at 10. However, where, as here, a solicitation specifies the labor mix and level of effort for proposals, there is essentially

Amelex's Direct Labor Rates

In evaluating direct labor costs, the SSEB first found the protester's proposed labor categories and amounts to be consistent with the RFP requirements. AR, Tab 2, SSEB Report at 144. Next, for each labor category, the SSEB utilized, among other things, data from the Department of Labor's Bureau of Labor Statistics (BLS), including the various wage rate percentiles within the BLS salary ranges, to establish a range of labor rates as a basis to assess the realism of offerors' proposed rates.¹⁴ Specifically, the evaluators considered the 10th – 50th percentile wage range for "junior" level positions; the 25th – 75th percentile wage range for "mid" level positions, and the 50th – 90th percentile wage range for "senior" level positions. AR, Tab 2, SSEB Report at 146-147; COS/MOL at 16-17.

The SSEB found that, with regard to Amelex's current employees--where the proposal included payroll verification--the direct labor rates were realistic, and the evaluators did not make any cost realism adjustments. AR, Tab 2, SSEB Report at 146. By contrast, for prospective hires, the SSEB found that for 32 labor categories Amelex had proposed direct labor rates that were not sufficiently supported and below the aforementioned BLS wage ranges for the various labor category levels. *Id.* at 147-148. For these positions, the SSEB adjusted upward Amelex's proposed direct labor rates to the low end of the BLS wage range for the particular labor category level. *Id.* Thus, when the SSEB made direct wage adjustments, the wage rates were adjusted upward to the 10th percentile (within the BLS wage range) for "junior" level positions, to the 25th percentile for "mid" level positions, and to the 50th percentile for "senior" level positions. An example of the SSEB's calculations is as follows:

Labor Category	Proposed Direct Labor Rate	BLS Wage Range Employed	Corresponding BLS Wage Range Amount	Adjusted Direct Labor Rate ¹⁵
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no unique technical approach, and an agency may reasonably evaluate the rates proposed for those established labor categories based on other available data. See *CSI, Inc.; Visual Awareness Techs. & Consulting, Inc.*, B-407332.5 *et al.*, Jan. 12, 2015, 2015 CPD ¶ 35 at 10-11; *Energy Enter. Sols., LLC; Digital Mgmt., Inc.*, B-406089 *et al.*, Feb. 7, 2012, 2012 CPD ¶ 96 at 9-10.

¹⁴ The BLS provides national wage data from employers in all industry sections at the national, state, and metropolitan levels. BLS wage rate data is available at various percentile thresholds as follows: 10th, 25th, 50th, 75th, and 90th percentiles. See BLS National Compensation Survey, at bls.gov/ncs/#tables (last visited Nov. 21, 2022).

¹⁵ Although Amelex did not propose any prospective hires in the first year, the adjustments to the starting labor rates for prospective hires resulted in cost adjustments to Amelex's proposal for years 2 through 5. For example, in year 2, Amelex proposed a

Configuration Management Analyst (Mid Level)	[\$DELETED]	25% - 75%	\$39.52 - \$62.67	\$39.52
Program Manager (Senior Level)	[\$DELETED]	50% - 90%	\$69.99 - \$100.00	\$69.99

AR, Tab 2, SSEB Report at 185; Tab 2b, Amelex Cost Summary Spreadsheets at 1 (Lines 40, 133), at 3 (Line 40), at 4 (Line 133); *see also* Tab 9, Amelex Enhanced Debriefing at 4.

Amelex argues that its direct labor rates for prospective hires were realistic because they were the same as the direct labor rates for its existing employees--which the Navy found to be realistic. Protest at 12-13; Comments & Supp. Protest at 5-6. The Navy explains that Amelex's proposed direct labor rates for prospective hires were inadequately supported and unrealistic because recruiting new hires was not the same as retaining existing employees, and that the wage adjustments made were reasonable. COS/MOL at 16-17, 31-32.

As set forth above, the SSEB found Amelex's direct labor rates for existing employees to be realistic because they were supported by payroll records, concluding that Amelex would be able to retain such employees based on the direct labor rates then being paid. AR Tab 2, SSEB Report at 146. These rates, however, in the agency's view were not realistic to support new hires because Amelex's current wages were low as compared to market averages and Amelex would have to attract and retain new employees based on current market conditions. *Id.* at 146-148. We have no basis to question the reasonableness of the agency's conclusions in this regard. *See Sotera Def. Sols., Inc., B-414056 et al.*, Jan. 31, 2017, 2017 CPD ¶ 46 at 6-7 (finding agency's cost realism evaluation, based upon BLS wage rate percentiles, to be reasonable).

Amelex Indirect Rates

Amelex's cost proposal indicated the firm used multiple rates to calculate its indirect costs: (1) a client (site) overhead rate; (2) a corporate general and administrative overhead (G&A) rate; and (3) a subcontractor G&A rate. AR, Tab 6, Amelex Proposal, Vol. III, Cost Proposal at 87. Amelex's client site overhead represented the indirect labor costs "associated with the management and support of [its] client (Government) site contracts workforce," including fringe benefits, as well as "expenses such as recruitment for client-site contract positions, telephone, supplies, training, business meetings, and a prorated allocation of corporate facilities costs. . . ." *Id.* Further, the

direct labor rate of [\$DELETED] for the configuration management analyst (mid-level) labor category (base year rate of [\$DELETED] plus a [DELETED]% escalation). AR, Tab 2b, Amelex Cost Summary Spreadsheet at 1 (Line 40). The SSEB, for the same labor category, adjusted the direct labor rate upward to \$40.36 (base year adjusted rate of \$39.52 plus a [DELETED]% escalation). *Id.* at 3 (Line 40).

base against which the client site overhead cost pool was allocated was Amelex's client site direct labor costs. *Id.* at 77, 87.

The record reflects that when evaluating Amelex's indirect rates, the SSEB compared the proposed rates to Amelex's historical rates for the past 3 years and to Amelex's Fiscal Year 2021 (FY21) provisional billing rate (PBR) as established by the Defense Contract Audit Agency (DCAA).¹⁶ AR, Tab 2, SSEB Report at 148-149, 187-188; *see also* Tab 6, Amelex Proposal, Vol. III, Cost Proposal at 77-78. With regard to the indirect rates for Amelex's corporate G&A and subcontractor G&A, the SSEB observed that the proposed rates were consistent with Amelex's FY21 PBR. AR, Tab 2, SSEB Report at 188. In those instances, the SSEB found Amelex's indirect rates to be realistic and made no adjustments. *Id.*

With regard to Amelex's client site overhead rate, however, the SSEB found the proposed rate to be lower than both Amelex's historical rates and its FY21 PBR. *Id.* at 187-188. Further, while Amelex's cost proposal narrative stated that its proposed client site overhead rate included the anticipated award of the contract here in its forecast--and would thereby result in a future rate that was lower than its FY21 PBR--the SSEB found that Amelex's proposal "did not provide sufficient information pertaining [to] the other contracts that were included in the cost pools or discuss potential changes in the base that would impact the indirect rates proposed for this effort." *Id.* at 188. Additionally, the SSEB determined that Amelex's historical rates did not demonstrate a consistent downward trend that would support the proposed client site overhead rate here. *Id.* Having found the proposed client site overhead rate to be unrealistic, the SSEB adjusted Amelex's proposed rate upward to the firm's latest FY21 PBR. *Id.*

A table summarizing Amelex's client site overhead rates is as follows:

	2018 Actual	2019 Actual	2020 Actual	FY21 PBR	Proposed Rate	Adjusted Rate
Client Site Overhead	[DELETED] ED)%	[DELETED] ED)%	[DELETED] ED)%	[DELETED] ED)%	[DELETED] % %	[DELETED] % %

AR, Tab 2, SSEB Report at 187-188.

Amelex argues the Navy ignored the protester's detailed justification regarding its proposed client site overhead rate, and instead "adher[ed] robotically" to the FY21 PBR, which did not reflect the increase in Amelex's revenues that would result from award of the contract here. Protest at 13; Comments & Supp. Protest at 6-7. The Navy contests the protester's contention and argues that Amelex's proposed client overhead rate was

¹⁶ A PBR is an established temporary indirect rate applicable to a specified period (e.g., a contractor's fiscal year) for the purpose of allowing interim reimbursement of incurred indirect costs. PBRs are established to approximate the contractor's final year-end indirect rates. FAR 42.704.

insufficiently supported to conclude, as the protester did, that award of the contract here would necessarily result in the rate proposed. COS/MOL at 29-32.

As a preliminary matter, we note that while Amelex's cost proposal included three indirect rates, it is only the evaluation of the client site overhead rate here--where Amelex did not use its current PBR--that is the subject of protest. For the remaining two indirect rates, where Amelex proposed rates that were consistent with the firm's current PBR, the agency found the rates to be realistic and made no adjustments.

As discussed above, Amelex's client site overhead rate is a calculated percentage (or fraction), where the cost "pool" (the numerator) is the indirect costs associated with the management and support of its client (government) site contracts workforce, including fringe benefits, while the allocation "base" (the denominator) is Amelex's client site direct labor costs. See AR, Tab 6, Amelex Proposal, Vol. III, Cost Proposal at 87, 162-163. When deriving its proposed client site overhead rate, Amelex included the expected increase in direct labor costs resulting from contract award in the rate's base, of which the cost evaluators were clearly aware.¹⁷ *Id.* at 161-162; Tab 2, SSEB Report at 188 ("The [offeror] claimed that the lower rates were proposed as award of this effort was included in its forecasted rates. . . .").

What the SSEB found, however, was that Amelex's proposal did not provide sufficient information pertaining the other contracts that were included in the client site overhead pool, or adequately discuss other potential changes to the cost base, that would impact the client site overhead rate proposed for this effort. AR, Tab 2, SSEB Report at 188. Further, the SSEB reviewed Amelex's historical client site overhead rate and observed that it did not follow a downward trend that would tend to support the rate proposed. *Id.* Based upon all the information at hand, the SSEB found there was insufficient information to conclude that Amelex's forecasted client site overhead rate was a realistic one, and adjusted the rate upward to Amelex's current BPR. *Id.* In sum, we find that the agency fully considered the information which Amelex claims was overlooked, and reasonably concluded that Amelex's proposed client site overhead rate did not represent the indirect costs that Amelex, and in turn the Navy, would likely incur should the contract be awarded to Amelex. As set forth above, Amelex's proposed costs are not a limit on its recovery during performance of a cost-reimbursement contract, and it is the agency's responsibility when conducting a cost realism evaluation to ensure that proposed costs are realistic. FAR 15.305(a)(1); *ICI Servs. Corp., supra*; *Logistics Mgmt. Inst., supra*. We find the agency reasonably did so here.

Best-Value Tradeoff Decision

Lastly, Amelex argues the agency's best-value decision was flawed as it was based on an improper evaluation of the protester's technical, past performance, and cost

¹⁷ Although Amelex is the incumbent contractor, the size of the follow-on F-35 program management support contract is much larger than the previous one.

proposals. Protest at 13. Because we have denied the protester's challenges to the evaluation, we find the protester's derivative challenge to the agency's best-value decision also to be without merit. *U.S. Facilities, Inc.*, B-418229, B-418229.2, Jan. 30, 2020, 2020 CPD ¶ 65 at 8; *Procentrix, Inc.*, B-414629, B-414629.2, Aug. 4, 2017, 2017 CPD ¶ 255 at 15.

The protest is denied.

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