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Decision

Matter of: AB International Services, LLC

File: B-419727.3

Date: March 21, 2023

John J. O'Brien, Esq., David S. Cohen, Esq., and Laurel Hockey, Esq., Cordatis LLP, for the protester.

Michael L. Sterling, Esq., Anthony J. Mazzeo, Esq., and Peyton Farley, Esq., Woods Rogers Vandeventer Black PLC, for The Bionetics Corporation, the intervenor.

Colonel Frank Yoon, Christian H. Robertson II, Esq., Isabelle P. Cutting, Esq., Thomas M. Powers, Esq., and Shelby L. Markus, Esq., Department of the Air Force, for the agency.

Christopher Alwood, Esq., and Alexander O. Levine, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's evaluation of proposals under the technical, past performance, and price factor is denied where the evaluation was reasonable and consistent with the solicitation's evaluation criteria.
2. Protest challenging the agency's comparative analysis and source selection decision is denied where the agency's best-value tradeoff and source selection decision were reasonable, adequately documented, and consistent with the terms of the solicitation.

DECISION

AB International Services, LLC (ABIS), a small business located in Vienna, Virginia, protests the award of a contract to The Bionetics Corporation, of Yorktown, Virginia, under request for proposals (RFP) No. FA2263-20-R-0002, issued by the Department of the Air Force for metrology and technical writing services in support of the Air Force Metrology and Calibration (AFMETCAL) program.¹ Agency Report (AR), Tab 3, RFP

¹ Metrology is the science of measurement and its application. The AFMETCAL program acquires and sustains precision measurement capabilities and operates a worldwide calibration network to help ensure that Air Force systems and equipment are accurate, uniform, reliable, and safe. *Air Force Metrology and Calibration*, AIR FORCE

at 3-46; AR, Tab 4, Performance Work Statement (PWS) at 2. The protester challenges various aspects of the agency's evaluation of proposals and source selection decision.

We deny the protest.

BACKGROUND

On February 26, 2020, the Air Force issued the solicitation in accordance with the procedures of Federal Acquisition Regulation (FAR) part 15, seeking proposals to provide metrology and technical writing services, including the operation of the Air Force Primary Standards Laboratory (AFPSL) at the Central Ohio Aerospace and Technology Center in Heath, Ohio.² RFP at 1; PWS at 2. The solicitation contemplated the award, on a best-value tradeoff basis, of a contract with fixed-price, fixed-price-with-incentive, and cost-reimbursement contract line items, for a 3-month base period and ten 1-year option periods. RFP at 3-46. The deadline for the submission of proposals was March 31, 2020 at 2:00 p.m. RFP at 1.

The solicitation advised offerors that the agency would evaluate proposals considering price and two non-price factors: technical and past performance. AR, Tab 20, RFP, Section M at 3. The technical factor included five subfactors: staffing approach; recruitment, training, and retention; quality plan; calibration technical orders quality plan; and measurement area assurance. *Id.* The solicitation provided that the past performance factor was more important than the price factor and that the technical factor was significantly more important than the past performance and price factors combined. *Id.* The solicitation also specified that the staffing approach and recruitment subfactors were of equal importance, but were significantly more important than the other subfactors. *Id.*

LIFE CYCLE MGMT. CENTER, <https://www.afldmc.af.mil/WELCOME/Organizations/Agile-Combat-Support-Directorate/Air-Force-Metrology-and-Calibration/> (last visited March 6, 2023).

² The Air Force Life Cycle Management Center website describes the AFPSL as:

the highest echelon metrology and calibration laboratory in the Air Force. It provides a critical link between the National Institute of Standards and Technology (NIST) and Air Force Base Precision Measurement Equipment Laboratories. . . and houses a measurement capability in practically every measurement discipline. . . . The AFPSL complex consists of laboratories with rigid environmental controls necessary for precise measurements.

AFMETCAL – Air Force Primary Standards Laboratory, AIR FORCE LIFE CYCLE MGMT. CENTER, <https://www.afldmc.af.mil/NEWS/Factsheets/Article/1935608/afmetcal-air-force-primary-standards-laboratory/> (last visited March 7, 2023).

As relevant to the resolution of this protest, the agency was to evaluate technical proposals under the quality plan subfactor by considering whether “the offeror’s proposal has a quality plan which demonstrates the offeror fully understands” the relevant calibration laboratory quality standards. *Id.* at 5. For the measurement area assurance subfactor, the solicitation directed the agency to evaluate proposals to assess whether the “offeror’s proposal substantiates their ability to meet Measurement Area Capability Document requirements.”³ *Id.*

The solicitation provided that the agency would evaluate recent past performance for relevancy and quality. AR, Tab 20, RFP, Section M at 5-8. The RFP considered ongoing contracts or contracts performed within 5 years from the issuance of the solicitation to be recent. *Id.* at 6. The agency was to evaluate the relevancy of an offeror’s past performance based on how each recent contract related to the scope, magnitude of effort, and complexity of the instant solicitation. *Id.* at 6-7. The agency would evaluate the quality of an offeror’s past performance considering how the contractor performed on its recent, relevant contracts. *Id.* The solicitation specified that the agency would assign each offeror an overall performance confidence rating of substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence. *Id.* at 5-6.

The solicitation advised that the agency “may consider past performance in the aggregate in addition to on an individual contract basis” and could consider both the information provided by offerors in their proposals as well as information obtained from other sources. *Id.* at 6. The solicitation required the agency to consider “the number and severity of” problems identified as well as any “mitigating circumstances, and the effectiveness of corrective actions that have resulted in sustained improvements.” *Id.* at 7. While the solicitation provided that more recent performance “may have a greater impact” on the agency’s confidence assessment, it did not require the agency to give more recent performance more weight. *Id.* at 8.

With regard to price, the agency was to evaluate proposals for completeness, reasonableness, unbalanced pricing, and total evaluated price. *Id.* at 8. The solicitation specified that the agency would “not be conducting a realism analysis of any kind.” *Id.* As relevant here, the RFP specified that the agency would evaluate price proposals for completeness and compliance with section L of the solicitation. *Id.* Section L required offerors to submit sufficiently detailed “pricing data that is required to evaluate the

³ The solicitation specified that these requirements included the following:

- 1) Processes to validate measurement uncertainty and ensure traceability[;]
- 2) Processes for recording, maintaining and analyzing historical data[;]
- 3) Statistical processes and analysis that will be utilized to validate measurement uncertainties[; and,]
- 4) Process to validate measurement uncertainties against other [Department of Defense] services and industry.

AR, Tab 20, RFP, Section M at 5.

reasonableness and balance of [the] proposed price” but instructed offerors that “[d]ata beyond that required by this instruction shall not be submitted.” AR, Tab 17, RFP, Section L at 10. The solicitation provided that the agency would calculate the total evaluated price by adding all the proposed contract line item numbers (CLINs) for the base and option year period of performance. AR, Tab 20, RFP, Section M at 9.

The solicitation incorporated by reference FAR clause 52.222-41, Service Contract Labor Standards, which provides that the contract will be subject to the Service Contract Act. RFP at 73. This clause mandates that each service employee performing this contract must be paid not less than the minimum wages and fringe benefits either determined by the Department of Labor in an attached wage determination or contained in a predecessor contractor’s collective bargaining agreement (CBA). FAR clause 52.222-41(c), (f). Included with the RFP were the applicable wage determination and the current CBA for the incumbent contract. See AR, Tab 53a, Wage Determination No. 2015-4729, Revision No. 19; AR, Tab 53b, Wage Determination No. CBA-2019-12790, Revision No. 3; see *also* AR, Tab 26, CBA Dated February 3, 2022.

The solicitation also incorporated by reference FAR clause 52.222-43, Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (Multiple Year and Option Contracts). RFP at 73. As relevant here, this clause states that “[t]he [c]ontractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.” FAR clause 52.222-43(b).

The Air Force received several timely proposals in response to the solicitation, including proposals from ABIS and Bionetics. Contracting Officer’s Statement (COS) at 8. After evaluating final proposals, the Air Force awarded a contract to ABIS in the amount of \$177,655,292. *Id.* at 9. On April 5, 2021, Bionetics filed a protest with our Office challenging various aspects of the Air Force’s evaluation of proposals and award decision. *The Bionetics Corp.*, B-419727, July 13, 2021, 2021 CPD ¶ 259 at 4-5. On July 13, our Office sustained Bionetics’s protest on the basis that the Air Force had failed to compare the offerors’ proposed professional compensation to the incumbent professional compensation as required by FAR provision 52.222-46. *Id.* at 7-9.

The Air Force subsequently conducted the required evaluation of professional employee compensation and performed an updated past performance evaluation due to the passage of time. COS at 8. On May 9, 2022, the Air Force requested final proposal revisions. COS at 8-9.

The agency evaluated ABIS's and Bionetics's final proposals as follows:

	Bionetics	ABIS
Technical		
Staffing Approach	Acceptable	Acceptable
Recruitment, Training, and Retention	Good	Good
Quality Plan	Acceptable	Acceptable
Calibration Technical Orders Quality Plan	Acceptable	Acceptable
Measurement Area Assistance	Outstanding	Good
Past Performance	Substantial Confidence	Substantial Confidence
Total Evaluated Price	\$185,762,242	\$188,367,056

AR, Tab 37, Source Selection Decision Document (SSDD) at 15-17.

The Source Selection Authority (SSA) decided that Bionetics's proposal represented the best value to the government. AR, Tab 37, SSDD at 18-21. When comparing the two technical proposals, the SSA specifically noted aspects of Bionetics's proposal that were advantageous to the government under the measurement area assistance subfactor. *Id.* at 18. When comparing the parties' past performance, the SSA noted that while both offerors received substantial confidence ratings, the SSA had slightly higher confidence in Bionetics's ability to perform based on its performance on the incumbent contract. *Id.* at 19.

The SSA concluded that given Bionetics's identified advantages under the technical and past performance factors, there was no basis to pay a \$2.6 million price premium to ABIS. *Id.* at 19. However, the SSA also noted that the price evaluation indicated that ABIS may have "incorrectly applied out-year escalation rates . . . inconsistent with FAR Contract Clause 52.222-43" potentially resulting in ABIS unnecessarily adding approximately \$6.9 million to its total price. *Id.* Accordingly, the SSA considered whether this potential price difference would change the agency's best-value decision. *Id.* The SSA concluded that, given the relative weights of the evaluation factors, Bionetics's advantages in the more important technical and past performance factors also warranted paying a possible \$4.3 million price premium. *Id.*

On November 4, 2022, the agency awarded the contract to Bionetics and informed ABIS that it was not selected for award. COS at 11; AR Tab 44, ABIS Notice of Non-Selection. While in the process of providing debriefings, the agency became aware that additional past performance information had become available between the past performance evaluation and the award date. COS at 12. The agency paused debriefings to evaluate this additional past performance. *Id.*; AR, Tab 48, November 22, 2022 Agency Email to ABIS. On December 5, after considering the additional past performance information, the SSA again concluded that Bionetics's proposal represented the best value to the government. AR, Tab 43, SSDD Addendum.

On December 5, the agency concluded ABIS's debriefing. On December 12, ABIS filed the instant protest with our Office.

DISCUSSION

The protester generally challenges the agency's evaluation of proposals and resulting source selection decision. We note that the protester raises several collateral arguments. While our decision does not specifically address every argument, we have reviewed all the arguments and conclude that none provides a basis to sustain the protest. We discuss several representative arguments below.

Past Performance

ABIS raises several challenges to the agency's evaluation of Bionetics's past performance. Protest at 14-27; Comments at 1-22. First, ABIS alleges that the agency's past performance evaluation unreasonably ignored negative past performance information known to the agency before the initial November 2, 2022 award decision. Comments at 12-15. In this regard, the protester argues that the agency failed to consider negative performance issues that were ultimately captured in Bionetics's July 29, 2022, contractor performance assessment report (CPAR) of the incumbent contract, an Air Force site assessment visit (SAV) report, and an AFPSL assessment report.⁴ *Id.* ABIS contends that this incumbent performance information was "too close at hand" for the agency to ignore when making its November 2 award. *Id.* at 15.

The agency generally responds that its past performance evaluation was reasonable and consistent with the terms of the solicitation. Memorandum of Law (MOL) at 8-13. The agency contends that it considered the negative past performance information proffered by the protester as part of the evaluation and reasonably concluded that it had substantial confidence in Bionetics's ability to perform the requirements of the solicitation. *Id.*

An agency's evaluation of past performance, including 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 agency's assessments are unreasonable or inconsistent with the solicitation criteria. *Metropolitan Interpreters & Translators, Inc.*, B-415080.7, B-415080.8, May 14, 2019, 2019 CPD ¶ 181 at 10; see also *SIMMEC Training Sols.*, B-406819, Aug. 20, 2012, 2012 CPD ¶ 238 at 4. A protester's disagreement with the agency's judgment does not establish that an evaluation was unreasonable. *FN Mfg., LLC*, B-402059.4, B-402059.5, Mar. 22, 2010, 2010 CPD ¶ 104 at 7.

⁴ Both the SAV report and the AFPSL assessment report were the result of assessments conducted by the Air Force to review Bionetics's operation of the AFPSL as part of the incumbent contract. AR, Tab 34, SAV Report; AR, Tab 38, AFPSL Assessment Report.

In addition, we have recognized that in certain limited circumstances, an agency has an obligation (as opposed to the discretion) to consider “outside information” bearing on an offeror’s past performance when it is “too close at hand” to require offerors to shoulder the inequities that spring from an agency’s failure to obtain and consider the information. *Perspecta Eng’g, Inc.*, B-420501.2, B-420501.3, Dec. 13, 2022, 2022 CPD ¶ 314 at 12 (citing *International Bus. Sys., Inc.*, B-275554, Mar. 3, 1997, 97-1 CPD ¶ 114 at 5).

Here, however, the record demonstrates that the past performance evaluation team reviewed and considered the incumbent past performance information generated after the March 2022 past performance evaluation and before the November 2 award decision. AR, Tab 42, Bionetics Past Performance Evaluation Addendum at 1-2. Indeed, the evaluators recognized a “decline of services” and a “performance shortfall on the latest evaluation period of the incumbent contract,” as described in the July 29 CPAR, and noted that similar performance challenges were reflected in the AFPSL assessment report. *Id.* at 2. However, the evaluators concluded that this did not change the agency’s confidence assessment of Bionetics because of the firm’s success in prior performance periods and its performance improvements following recent corrective actions. *Id.* The SSA later reviewed and concurred with the past performance information considered by the past performance evaluation team. AR, Tab 43, SSDD Addendum at 1. Since both the agency evaluators and the SSA did consider the recent performance issues on the incumbent contract, we see no basis to apply the “close at hand” line of decisions here.⁵

ABIS also contends that, to the extent the agency did consider this negative past performance information, the agency’s evaluation mischaracterized the ratings from Bionetics’s July 29 CPAR. Comments at 19-20. For example, the protester argues that the agency’s finding that “[t]he CPARs showed laboratory quality was Exceptional” is not supported by the actual CPAR because Bionetics’s performance quality was rated as very good. *Id.*

Our review of the record reveals no discrepancy. The agency’s evaluation notes, when discussing the CPAR ratings, state that “[t]he CPAR for the most recent period . . . rated Quality as Very Good.” AR, Tab 42, Bionetics Past Performance Evaluation Addendum at 1. When discussing the narrative information from the CPAR, the evaluation further states “[t]he CPARs showed laboratory quality was exceptional.” *Id.* These statements accurately describe the July 29 CPAR, which states that for the most recent review

⁵ To the extent the protester challenges the agency’s failure to consider this negative past performance information before making the initial November 2 award decision, such arguments are without merit. See Comments at 14-15. Where concerns raised during an initial evaluation have been resolved by the final evaluation, the initial evaluation is immaterial. See *PAI Corp.*, B-298349, Aug. 18, 2006, 2006 CPD ¶ 124 at 4 n.3 (citing *American Indian Sci. and Eng’g Soc’y*, B-232217, Dec. 12, 1988). The relevant inquiry, as addressed below, is whether the previous concerns were resolved and the agency’s final evaluation was reasonable.

period “quality in the Air Force Primary Standards Laboratory [] was exceptional.” AR, Tab 40, July 29 CPAR at 2. Accordingly, we see no merit to the argument that the agency’s evaluation mischaracterized or misstated the ratings in the July 29 CPAR and therefore deny this ground of protest.

The protester further contends that the agency’s November 2022 addendum evaluation of Bionetics’s recent negative past performance information was “cursory” and unreasonably “ignores the significant problems identified” in the above-cited reports. Comments at 19-22. In this regard, ABIS argues that the past performance evaluation “cherry picks” favorable statements from the July 29 CPAR while ignoring negative past performance information. *Id.* at 20-21. We have reviewed the protester’s arguments and the evaluation record and find that the agency’s evaluation of Bionetics’s past performance was reasonable and in accordance with the terms of the solicitation.

As noted above, the agency was to evaluate the performance quality of recent, relevant efforts as part of its past performance evaluation. AR, Tab 20, RFP, Section M at 7. As relevant here, the solicitation specifically required the agency to consider “the number and severity of” problems identified as well as any “mitigating circumstances, and the effectiveness of corrective actions that have resulted in sustained improvements.” *Id.* While the solicitation provided that more recent performance “may have a greater impact” on the agency’s confidence assessment, it did not require the agency to give more recent performance more weight. *Id.* at 8. Finally, the solicitation stated that the “performance confidence assessment . . . represents an overall evaluation of contractor performance.” *Id.*

Here, the record shows that the agency considered the adverse performance information contained in the July 29 CPAR and the AFPSL assessment report. AR, Tab 42, Bionetics Past Performance Evaluation Addendum at 1-2 (“The Marginal rating [for schedule] was based on not meeting turnaround time for laboratory production . . . [t]he most recent CPAR . . . noted a decline in service”). The agency also evaluated Bionetics’s successful performance during six previous periods of performance on the incumbent contract and specifically considered mitigating circumstances for the recent downturn in performance.⁶ *Id.* at 2. The agency further considered the effectiveness of corrective actions undertaken by Bionetics, including the fact that “the average time for items awaiting commercial calibration support has decreased by 50 [percent].” *Id.* Finally, we note that the CPAR at issue demonstrates that the agency “is generally pleased with the performance of this contract” and the assessing official “would recommend [Bionetics] for similar requirements in the future.” AR, Tab 40 July 29 CPAR at 3.

On this record, and in light of the solicitation’s requirement that the agency consider mitigating circumstances and the effectiveness of corrective actions, we conclude that

⁶ For example, the evaluators noted that Bionetics “faced challenges over the past period of performance including COVID and a longer than anticipated source selection process.” *Id.* at 2.

the agency's evaluation was reasonable. While the protester highlights issues in the July 29 CPAR and other assessment reports to assert that Bionetics has not successfully met every performance requirement, the protester does not meaningfully demonstrate that the agency's conclusions regarding Bionetics's overall performance of the incumbent contract were incorrect. Considering the statement in the challenged CPAR that the agency was pleased with contract performance despite the identified issues, we do not find unreasonable the evaluators' failure to address each individual performance issue identified in that CPAR. Nor do we find the agency's conclusion--that it has high expectations that Bionetics will successfully perform the required effort--to be unreasonable. We deny this protest ground.

Technical Evaluation

ABIS challenges the evaluation of Bionetics's proposal under the quality plan subfactor based on the performance issues identified in the above-discussed SAV and AFPSL assessment reports. Protest at 42-46; Comments at 34-45. In this regard, ABIS argues that the agency unreasonably failed to assess weaknesses or technical risk to Bionetics's proposed quality plan despite knowing that the quality plan fell short of meeting AFMETCAL quality and certification requirements. Comments at 43-44. The agency asserts that the protester's characterization of the two reports are "factually inaccurate" and that the Air Force properly evaluated Bionetics's quality plan. MOL at 9, 27.

In reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. *AECOM Mgmt. Servs., Inc.*, B-417639.2, B-417639.3, Sept. 16, 2019, 2019 CPD ¶ 322 at 9. Rather, we will review the record to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. *Id.* A protester's disagreement with the agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. *Vertex Aerospace, LLC*, B-417065, B-417065.2, Feb. 5, 2019, 2019 CPD ¶ 75 at 8.

Here, the solicitation required the agency to evaluate offerors' proposed quality plans to determine whether they demonstrated that the offeror fully understands the calibration laboratory quality standards. AR, Tab 20, RFP, Section M at 5. Notably, the protester does not point to, and our review of the solicitation does not reveal, any requirement that the agency consider past performance information when evaluating proposed quality plans under the technical factor.

Based on our review of the record, we find the agency's evaluation of Bionetics's quality plan to be unobjectionable. The record demonstrates that the agency reviewed the proposed quality plan and found it outlined a quality program that met the requirements

of the solicitation.⁷ AR, Tab 33, Bionetics Technical Evaluation at 31-32. The agency further documented its rationale for finding that Bionetics's quality plan met the solicitation's requirements by quoting relevant aspects of its proposal. *Id.* at 33-35. The agency ultimately evaluated Bionetics's proposal under the quality plan subfactor as acceptable with low risk.⁸ *Id.* at 31-32.

Here, while ABIS argues that the agency unreasonably ignored reports that Bionetics had not successfully implemented its quality plan or otherwise met all quality requirements in its performance of the incumbent contract, see Comments at 44-45, it does not meaningfully demonstrate that any aspect of Bionetics's proposed quality plan failed to meet the requirements of the solicitation. Further, ABIS does not point to any solicitation language requiring that the agency consider past performance when evaluating proposed quality plans.⁹ In short, ABIS has not shown that the agency's

⁷ The evaluators specifically found that:

Their Quality Plan addresses a process evaluation and improvement program that covers all services listed on the Service Delivery Summary. . . . It specified the areas to be evaluated or measured, how the evaluation or measurement will be scheduled and accomplished, and the title of the individuals who will perform the evaluation or measurement. The program included methods for identifying and implementing improvements to correct unacceptable performance or improve satisfactory performance. Their Quality Plan addressed software development and configuration control.

AR, Tab 33, Bionetics Technical Evaluation at 32.

⁸ As referenced above, in rating Bionetics's quality plan acceptable under the quality plan subfactor, the agency found Bionetics's proposal provided an adequate approach and understanding of the quality plan requirements. AR, Tab 20, RFP, Section M at 3. In finding Bionetics's technical risk to be low under the quality plan subfactor, the agency concluded that while Bionetics's proposal may contain weaknesses that have a small potential to cause disruption of schedule, increased cost, or degradation of performance, these could be overcome with normal contractor effort and agency monitoring. *Id.* at 4.

⁹ In the absence of such a solicitation provision, we see no requirement that the agency consider past performance information in its technical evaluation. We have stated that an agency's obligation to consider information that is "too close at hand" is limited to information concerning the evaluation of past performance rather than information concerning the evaluation of a firm's technical proposal. See *Enterprise Solutions Realized, Inc.; Unissant, Inc.*, B-409642, B-409642.2, June 23, 2014, 2014 CPD ¶ 201 at 9. Further, an agency's evaluation of an offeror's technical proposal is dependent on the information furnished in the proposal. *Id.*

evaluation of Bionetics's quality plan was inconsistent with the stated evaluation criteria or otherwise unreasonable.¹⁰ We deny this ground of protest.

ABIS also challenges the agency's evaluation of Bionetics's proposal under the measurement area assurance subfactor. Protest at 42-46; Comments at 46-49. ABIS alleges that the agency unreasonably credited Bionetics for including a measurement area capabilities document in its proposal, when the agency should have focused on the offeror's capability to produce such a document. Comments at 48-49. In this regard, the protester argues that this consideration unreasonably favored Bionetics because only the incumbent could possess an already approved measurement area capabilities document.¹¹ *Id.* ABIS contends that it was prejudiced as a result since Bionetics

¹⁰ ABIS maintains that the agency's technical evaluation unreasonably failed to consider recent assessment reports demonstrating that Bionetics's quality plan cannot comply with the RFP requirements. Comments at 43-44 (*citing, e.g., Maritime Berthing, Inc.*, B-284123.3, Apr. 27, 2000, 2000 CPD ¶ 89). Our Office has explained that, in certain circumstances, an agency may not accept at face value a proposal's promise to meet a material requirement where there is significant countervailing evidence reasonably known to the agency that should create doubt as to whether the offeror will or can comply with that requirement. See *Fidelis Logistic and Supply Servs.*, B-414445, B-414445.2, May 17, 2017, 2017 CPD ¶150 at 7. Here, however, we find that the protester has not demonstrated that the assessment reports constitute significant countervailing evidence. While the proffered reports certainly reveal that Bionetics has had several recent performance issues on the incumbent contract, the protester has not demonstrated that such failures bear on the capability of Bionetics's proposed quality plan to demonstrate an understanding of the solicitation's requirements.

¹¹ The protester also contends that Bionetics had an unfair competitive advantage due to being the only offeror that possessed performance technical data and a copy of its already approved measurement area capabilities document from its performance on the incumbent contract. Comments at 46-47. We find such arguments to be untimely. Our Bid Protest Regulations contain strict rules for the timely submission of protests. These rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. *Verizon Wireless*, B-406854, B-406854.2, Sept. 17, 2012, 2012 CPD ¶ 260 at 4. Our timeliness rules specifically require that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of proposals be filed before that time. 4 C.F.R. § 21.2(a)(1).

Here, the protester's pleadings demonstrate that it was aware of this alleged unequal access to information before the issuance of the final RFP and therefore well before the deadline for receipt of proposals. Specifically, the protester discusses questions submitted in response to the second draft RFP, including one that states "[t]he incumbent has the data and information required for [the] Measurement Area Capabilities Document, therefore it appears to present an unfair competitive advantage." Protest at 43-44; Comments at 47-48. Despite having this information

unreasonably received a rating of outstanding while ABIS received only a rating of good. *Id.* at 49.

The agency responds that its evaluation of the management area assurance subfactor was reasonable and consistent with the solicitation. MOL at 23-27. The agency argues that it considered the advantages in both offerors' proposals in accordance with the evaluation criteria and reasonably found that Bionetics's proposal was superior to ABIS's under this subfactor. MOL at 23-24. The agency notes that an incumbent may possess advantages due to its experience and that the Air Force was not required to compensate for such an advantage by equalizing the procurement. *Id.* at 24-25. We agree with the agency.

The solicitation provided that the agency would evaluate proposals under the measurement area assurance subfactor to determine whether the proposal demonstrates the offeror's ability to meet measurement area capability document requirements. AR, Tab 20, RFP, Section M at 5. The agency was to evaluate various enumerated measurement processes as described in offerors' proposals. *Id.* The protester does not point to, and our review of the solicitation language does not reveal, any prohibition on the submission of a measurement area capability document as part of a proposal.

It is well settled that an offeror may possess unique information, advantages, and capabilities due to its prior experience under a government contract as an incumbent contractor, and the government is not required to equalize competition to compensate for such an advantage unless there is evidence of preferential treatment or other improper action. See FAR 9.505-2(a)(3); *Lovelace Sci. & Tech. Servs.*, B-412345, Jan. 19, 2016, 2016 CPD ¶ 23 at 12; *Signature Performance, Inc.*, B-411762, Oct. 19, 2015, 2015 CPD ¶ 321 at 5. The existence of an incumbent advantage, in and of itself, does not constitute preferential treatment by the agency, nor is such a normally occurring advantage necessarily unfair. *EM Key Sols., Inc.*, B-420221, B-420221.2, Jan. 10, 2022, 2022 CPD ¶ 68 at 9-10. We also note that evaluation ratings and the number of strengths and weaknesses assessed are merely a guide to, and not a substitute for, intelligent decision making in the procurement process. *Affolter Contracting Co., Inc.*, B-410878, B-410878.2, Mar. 4, 2015, 2015 CPD ¶ 101 at 11 n.10.

The record demonstrates that the Air Force evaluated Bionetics's proposal under the measurement area assurance subfactor by considering the offeror's narrative describing its measurement processes as well as an attached draft measurement area capability document. AR, Tab 33, Bionetics Technical Evaluation at 43; see also AR, Tab 28, Bionetics Proposal Vol. II-Technical at 113-138. The agency identified two strengths in Bionetics's proposal under this subfactor, one for a perpetual measurement approach that uses historical data and normal test instrument calibrations to monitor for calibration

prior to the close of the solicitation, the protester did not raise this challenge until after the contract was awarded. We therefore dismiss this protest ground as untimely.

issues, and another for an approach to conducting internal calibrations before and after outside sources separately calibrate an item.¹² AR, Tab 33, Bionetics Technical Evaluation at 43.

On this record, we find no basis to question the agency's evaluation of proposals under this subfactor. As noted above, nothing in the solicitation prevented an offeror from submitting a draft measurement area capabilities document with its proposal, and the protester has not explained why the inclusion of such a document would not reasonably demonstrate an offeror's ability to meet the solicitation's measurement area capability document requirements. Further, the record establishes that the agency did not simply credit Bionetics's proposal for its draft measurement area capabilities document, but rather identified the above-referenced strengths from its review of the protester's and awardee's proposed approaches. The contemporaneous evaluation record therefore reflects that the difference in the adjectival ratings under this subfactor resulted from the agency's consideration of the relative merits offered by each proposal, and not simply a review of whether an offeror submitted a measurement area capabilities document. While ABIS may disagree with the agency's judgments, it has failed to establish that those judgments were unreasonable. Accordingly, this protest ground is denied.

Price

ABIS raises several challenges to the agency's price evaluation, arguing that Bionetics's price proposal was incomplete and that the agency's evaluation was unreasonable. Protest at 27-42; Comments at 22-30; Protester's Supp. Price Briefing at 1-5. First, ABIS contends that Bionetics's price proposal was incomplete because it did not include any supporting price information showing the build-up of Bionetics's proposed CLIN prices. Comments at 23-24. The protester asserts that this failure violates the solicitation's instruction to provide "all required supporting documentation." Comments at 24 (*quoting* AR, Tab 17, RFP, Section L at 10-11).

The solicitation provided that the agency would evaluate price proposals for completeness by reviewing price submissions "for completeness and compliance with Section L of the solicitation." AR, Tab 20, RFP, Section M at 8. With regard to what pricing information was required, the solicitation explained that offerors should submit "sufficiently detailed [price data] to demonstrate their [prices'] reasonableness and balance." AR, Tab 17, RFP, Section L at 10. Later, the solicitation explained that offerors must "provide separate proposed prices" for three different pay bands associated with each fixed-price-plus-incentive CLIN. *Id.* The solicitation then instructed that "[d]ata beyond that required by [these] instruction[s] shall not be submitted, unless you consider it essential to document or support your price position." *Id.* at 10-11. Attached to the solicitation was a price proposal workbook that included

¹² The agency also assessed two strengths to ABIS's proposal under the measurement area assurance subfactor. See AR, Tab 37, SSDD at 18 (discussing the relative value of Bionetics's assessed strengths and "ABIS'[s] risk-based health assessment and its sub-discipline proficiency testing strengths" under the same subfactor).

pre-filled estimated prices for the cost-reimbursement CLINs and blank spaces where the offerors could insert their proposed prices for the fixed-price and fixed-price-plus-incentive contracts. AR, Tab 21, Price Proposal Workbook.

The record demonstrates that Bionetics submitted a price proposal that included or described, among other information, proposed labor rates, labor-associated costs, fringe benefits, subcontractor costs, other direct costs, indirect costs, and profit. See AR, Tab 31b, Bionetics Proposal Vol. IV-Price. Bionetics also submitted a completed price proposal workbook with filled-in prices for the fixed-price CLINs. AR, Tab 31d, Bionetics Price Workbook. The agency evaluated Bionetics's price proposal and found it complete, stating that it "addressed all required elements called out in Section L of the solicitation." AR, Tab 35, Bionetics Final Proposal Revision (FPR) Price Evaluation at 6.

On this record, we find that this aspect of the agency's price completeness evaluation was reasonable and consistent with the terms of the solicitation. While the protester maintains that the solicitation instructed offerors to submit "all required supporting documentation," it has not demonstrated what price-supporting information was required by the solicitation that Bionetics did not submit. See Protester's Supp. Price Briefing at 5. To the extent the protester complains that Bionetics should have submitted additional price build-up information like ABIS did, the protester has not explained why its proposal should be the standard for comparison rather than the requirements of the RFP. Considering the instruction that offerors were not to submit pricing data beyond that required by the solicitation, and the fact that the proposed prices were fixed-price and fixed-price-plus-incentive, we see no basis to conclude that Bionetics failed to include required pricing information.¹³ As such, we deny this ground of protest.

¹³ ABIS puts forth several related theories asserting that the agency should have found Bionetics's price to be incomplete or not credible based on supporting data and staffing data from its proposal. Comments at 22-30. In this regard, the protester contends that the agency should have compared Bionetics's staffing plan and supporting price data in its proposal to the proposed CLIN prices and concluded that there were "errors and/or omissions in Bionetics's pricing [that] resulted in a gross understatement of the performance cost." *Id.* at 25. While framed as allegations of incomplete pricing, we view ABIS's arguments here that the agency should have considered whether Bionetics's price was understated to essentially be a price realism challenge.

Where a solicitation contemplates the award of a fixed-price contract, price realism is not ordinarily considered, because a fixed-priced type contract places the risk and responsibility for costs and resulting profit or loss on the contractor. *HP Enter. Servs., LLC*, B-413888.2 *et al.*, June 21, 2017, 2017 CPD ¶ 239 at 5; see FAR 15.402(a). Absent a solicitation provision providing for a price realism evaluation, however, agencies are neither required nor permitted to conduct one in awarding a fixed-price contract. *Delta Risk, LLC*, B-416420, Aug. 24, 2018, 2018 CPD ¶ 305 at 18-19. Here, as noted above, the solicitation provided that the agency would "not be conducting a realism analysis of any kind." AR, Tab 20, RFP, Section M at 8. Accordingly, we see

ABIS also contends that the agency unreasonably evaluated price proposals when it determined that Bionetics proposed a lower total evaluated price than ABIS. Protest at 27-32; Comments at 28-30. In this regard, ABIS objects to the agency's finding during the best-value tradeoff that ABIS's proposal may have improperly included escalated option year labor rates derived from the CBA applicable to the procurement. *Id.* The protester alleges that the agency improperly read FAR clause 52.222-43 as prohibiting offerors from proposing escalated labor rates for option years even where an existing wage determination or CBA already includes increased labor rates for those time periods. Comments at 28-30. ABIS argues that, had the agency evaluated what Bionetics's price would have been if it included increases from option year labor rate escalations, then ABIS would have been the low-priced offeror. *Id.* at 30.

The agency responds that it reasonably interpreted FAR clause 52.222-43(b) as prohibiting offerors from including amounts of known or projected increases in labor rates that may become effective after the base period of the contract.¹⁴ MOL at 13-18. The agency further argues that ABIS cannot demonstrate prejudice. In this regard, the agency notes that it specifically considered the possibility that offerors had calculated their proposed CLIN prices on different bases. The Air Force therefore performed an alternate tradeoff where it reduced ABIS's total evaluated price by the estimated amount the escalated option year labor rates would cost. Ultimately, the agency still found that Bionetics provided the best value to the government. MOL at 21.

Here, the solicitation provided that the agency would calculate an offeror's total evaluated price by adding all the proposed CLIN prices for the base and option years' periods of performance. AR, Tab 20, RFP, Section M at 9. Despite ABIS's contentions, it does not identify, and our review of the solicitation does not reveal, any requirement that the agency consider offerors' labor rates when calculating the total evaluated price.¹⁵ Further, as discussed above, all the CLINs for which offerors could propose

no basis to conclude that the agency should have considered whether Bionetics's CLIN pricing was understated when evaluating the completeness of the pricing proposal.

¹⁴ Given the specific submission and evaluation requirements of this solicitation and our conclusions below; we do not reach the specific question of whether FAR clause 52.222-43 prohibits offerors from proposing escalated labor rates for option years where an existing wage determination or CBA already includes increased labor rates for those time periods as it is not relevant to the resolution of the protest.

¹⁵ Notably, there was no specific solicitation instruction that offerors submit labor rates other than the requirement to submit "salaries and fringe benefits" for professional employees found in FAR provision 52.222-46(a). See RFP at 123 (incorporating FAR provision 52.222-46 by reference). While labor rates may have been included as supporting data in proposals and used in the agency's evaluation of price completeness, reasonableness, balance, or compliance with other requirements; we do not see how they are relevant to the total evaluated price calculation.

pricing were fixed-price or fixed-price-with-incentive CLINs. See AR, Tab 21, Price Proposal Workbook.

On this record, we see no basis to conclude that the agency's evaluation of offerors' total evaluated prices was unreasonable. The record demonstrates that the agency calculated the total evaluated price as required by the solicitation, that is, by calculating the sum of the proposed fixed-price CLINs and the agency-provided estimated costs of the cost-reimbursement CLINs. See AR, Tab 35, Bionetics Price Evaluation at 7-10. While the parties may have used their intended labor rates to create their proposed prices, there is nothing in the solicitation which requires the agency to consider whether an offeror did use, or should have used, escalated, out-year labor rates in its price planning when calculating the total evaluated price. The use of fixed-price and fixed-price-with-incentive CLINs puts the risk that costs of performance will exceed the proposed price squarely on the contractor.

Further, we see no basis to disagree with the award decision where, as here, the agency was able to evaluate proposed prices on a common basis. See *Jones Operations & Mgmt. Co.*, B-248432.2, Oct. 16, 1992, 92-2 CPD ¶ 335 at 4-5 (finding to be reasonable an agency's evaluation of price proposals, some of which included out-year CBA wage rates, and one of which did not, where the agency "reconstructed" one of the offers in order to compare proposed prices on the same basis). The contemporaneous record shows that the agency identified and documented its conclusion that ABIS may have included labor-rate escalations from the CBA in its pricing while Bionetics explicitly did not. AR, Tab 37, SSDD at 19. The agency estimated that including these escalations may have led to ABIS proposing an additional \$6,938,433, meaning that Bionetics's proposal could represent a \$4.3 million price premium under this alternate calculation. *Id.*

To address this, the SSA documented its consideration of a potential best-value tradeoff between Bionetics and ABIS had ABIS proposed such a lower price. *Id.* The SSA concluded that the non-price advantages offered by Bionetics's proposal were worth a \$4.3 million price premium. ABIS does not allege that the agency incorrectly calculated the total evaluated prices or disagree with the agency's estimate of ABIS's lower price if the protester had not included escalated labor rates in its proposal. See Comments at 28. In short, we see no reason to conclude that the agency's evaluation of price or its best-value tradeoff were unreasonable based on its comparison of total evaluated prices. In such circumstances, ABIS cannot demonstrate competitive prejudice from this alleged error. See *American Cybernetic Corp.*, B-310551.2, Feb. 1, 2008, 2008 CPD ¶ 40 at 2-3. Competitive prejudice is an essential element to every viable protest, and where an agency's improper actions did not affect the protester's chances of receiving award, there is no basis for sustaining the protest. *Id.*

Best-Value Tradeoff

Finally, ABIS generally contends that the agency's best-value tradeoff and source selection decision were unreasonable because they were based on the alleged underlying evaluation errors discussed above. Protest at 51-53; Comments at 50. We view ABIS's allegations here as derivative of the challenges to the agency's evaluation. Thus, we dismiss these allegations because derivative allegations do not establish independent bases of protest. *GCC Techs., LLC*, B-416459.2, Nov. 19, 2018, 2018 CPD ¶ 394 at 8.

The protest is denied.

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