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Decision

Matter of: IBM Corporation, IBM Consulting--Federal

File: B-421471; B-421471.2; B-421471.3; B-421471.4

Date: June 1, 2023

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DIGEST

1. Protests that the agency unreasonably evaluated awardee's technical proposal are denied where the evaluation was consistent with the solicitation and procurement law.
 2. Protests that the solicitation was latently ambiguous are dismissed as untimely challenges to the terms of the solicitation, where the protester perceived a lack of clarity in the solicitation prior to the deadline for receipt of proposals.
 3. Protests that the agency unreasonably evaluated the awardee's proposed prices are dismissed, where the allegations were derivative of an untimely challenge to the solicitation terms, denied, where the evaluation was consistent with the solicitation and procurement law.
 4. Protest challenging the agency's price realism evaluation of the awardee's proposed price is sustained where the record reflects that the agency's evaluation failed to reasonably consider the protester's price.
 5. Protest that the agency engaged in misleading discussions is dismissed as untimely, where the allegation was asserted more than 10 days after the supplemental document production that provided the basis for the protest.
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DECISION

IBM Corporation, IBM Consulting--Federal, of Bethesda, Maryland, protests the Department of the Air Force's issuance of a task order to Accenture Federal Services, LLC, of Arlington, Virginia, under fair opportunity proposal request (FOPR) No. FA8100-22-R-0002. The FOPR sought a contractor to provide all labor and supplies necessary to perform the one-time development and deployment of a localized on-site Industrial Internet of Things (IIoT) platform to provide real-time remote monitoring of industrial plant equipment at the Oklahoma City--Air Logistics Complex. The protester argues that the agency unreasonably evaluated the awardee's technical proposal, that the solicitation contained latent ambiguities, that the agency unreasonably evaluated the awardee's price, that the agency conducted misleading discussions, and that the agency's best-value tradeoff analysis was flawed as a result of the associated errors.

We sustain the protest in part and deny it in part.

BACKGROUND

The Air Force Sustainment Center (AFSC) is one of six specialized centers assigned to the Air Force Materiel Command, a major command of the United States Air Force. AFSC is charged with maintaining and repairing the Air Force's assets, including performing aircraft and engine overhauls and maintenance, landing gear overhauls, avionics repairs, and commodities repairs and manufacturing. Agency Report (AR), Tab 6, FOPR, attach. 1, Statement of Objectives (SOO) at 13. To address issues with its existing Operational Technology (OT) framework, AFSC seeks to establish the AFSC Technology Hosting Environment for NextGen Automation (ATHENA), an OT ecosystem that aims to "realize the benefits of a resilient and secure digital ecosystem," and "leverage the unique benefits provided by connected devices and autonomous machinery." Protest, exh. 2, ATHENA Requirements at 1. The ATHENA ecosystem is comprised of three distinct pillars: Digital Infrastructure, Data Environment, and the IIoT Platform. *Id.* at 2.

Relevant to this protest, an IIoT is a system of interrelated computing devices, mechanical and digital machines, objects, animals, or people provided with unique identifiers and the ability to transfer data over a network without requiring human-to-human or human-to-computer interaction. *Id.* at 3. The IIoT continues to develop as technology advances, and as the need to interact with devices in a new way continues to develop. *Id.* An IIoT uses sensors and other technology in an industrial setting to leverage real-time data to monitor and control devices in the field, then communicate and display that data to foster better decision making in industrial processes. *Id.*

Seeking a contractor to assist in the development of an IIoT, the Air Force issued the FOPR, pursuant to the procedures of Federal Acquisition Regulation (FAR) subpart 16.5, to holders of the General Services Administration's Alliant 2 governmentwide acquisition contract (GWAC). FOPR, attach. 3, IIoT Enterprise Platform at 68. The FOPR contemplated the issuance of a single hybrid task order containing both fixed-price and cost-reimbursable contract line item numbers (CLINs),

with a possible 5-year period of performance. *Id.* Award would be made to the offeror whose proposal represented the best value to the government, considering two factors: technical proposal and price. *Id.* at 2.

The technical proposal factor contained Gates 1 and 2. *Id.* Gate 1 had a single subfactor: IIoT enterprise platform solution-as-a-service (SolaaS) relevant magnitude of efforts. Under that subfactor, the FOPR required each offeror to provide at least one, but no more than three, references demonstrating that it had delivered, either as a prime contractor or in a teaming relationship, a successful IIoT platform in a SolaaS model that incorporated two or more geographically separated locations, encompassing a multi-varied manufacturing environment consisting of 500 or more dissimilar manufacturing machines and support devices. *Id.* at 72. The Gate 1 subfactor would be evaluated as go/no go under recency and relevance, and only proposals evaluated as go would be evaluated under Gate 2. *Id.* at 69; FOPR at 81.

Gate 2 contained two subfactors: technical approach and performance work statement (PWS), and enterprise product description. FOPR, attach. 3, IIoT Enterprise Platform at 69. Under the technical approach and PWS subfactor, the solicitation required offerors to provide their technical approach in response to the IIoT Enterprise Platform SOO. *Id.* at 73. Under the enterprise product description subfactor, offerors were required to “describe how their proposed product implements their solution and addresses the continuum of IIoT opportunities within the scope of this effort.” *Id.* at 75. The agency would assign each of the two Gate 2 subfactors a technical rating (of outstanding, acceptable, or unacceptable) and a technical confidence rating (of high, moderate, or low). FOPR at 81-82. The two subfactors were of equal importance, and each, individually, was more important than the cost/price factor. *Id.* at 80.

With regard to cost/price, the solicitation advised offerors that the agency would evaluate price proposals under all CLINs for reasonableness, unbalanced pricing, and realism, and that to do so the agency “may use one or more of the price analysis techniques described in FAR 15.404” and may also “use other evaluation techniques as needed.” *Id.* at 76. Only the fixed-price CLINs would be included as part of an offeror’s total evaluated price (TEP). See AR, Tab 7, FOPR amend. 1, attach. 2, Pricing Matrix.

The RFP described the roles and responsibilities of the contractor and the agency during contract performance. In particular, the solicitation provided for an ongoing baselining process, during which the government would identify one or more industrial areas for “the next iteration” of the IIoT platform. FOPR at 49. The government and contractor would “collaborate in the administration of [a] survey” that would be “considered a ‘living document’ in the sense that the survey can be edited or updated in real time upon the consent of Government representatives.” *Id.* The survey would include the number of system users and “[t]he number of varieties, maturity, and complexity of connected devices.” *Id.* at 50. The FOPR explained that “[t]he Government and Contractor will co-visit the affected industrial area to verify survey results and allow the Contractor to accurately determine the factors in the next phase of implementation. The Contractor and Government validate and verify survey

information.” *Id.* at 49. The government would then provide the survey results to the contractor “for planning and [rough order of magnitude (ROM)] development purposes.” *Id.*

During the solicitation process, offerors submitted, and the agency answered, two questions of particular relevance to this protest. Question 19 addressed the important baselining task:

19. Question: Considering the following statements in SOO Section 14: 14.1, “The government does not have collective situational awareness of the specifics regarding the types and complexity of the Industrial Plant Equipment (IPE) that are present in the AFSC Enterprise. The baselining task exists to account for this reality as it gives both the Contractor and Government to understand the scope needed for the next step in the enterprise inclusion process.” 14.1.1, “The survey is used by both the Contractor and the Government to gain relevant information regarding their current IIoT capabilities and environment. The Government and Contractor will co-visit the affected industrial area to verify survey results and allow the Contractor to accurately determine the factors in the next phase of implementation. . . . The Government provides the results of this survey to the Contractor for planning and ROM development purposes.”

Does the Government intend for the Contractor to execute the effort estimated in the baselining ROMs as a part of the “to be negotiated” Baselining CLINs? Or does the Government intend for effort identified during Baselining survey and assessment activities to be implemented via Engineering Change Proposals (ECP) that modify appropriate [firm-fixed-price (FFP)] CLINs?

Response: The Platform Installation CLIN X0004 will move from FFP pricing to [cost-plus-fixed-fee] pricing. This will address the concern detailed in this comment.

AR, Tab 7, FOPR amend. 1 at 66-67. Question 24 asked the agency to provide its best estimate of the number of devices. *Id.* at 68. The Air Force responded, in part:

The best estimate right now, within a large variation, is between 5,000 and 7,500 devices.

The Baselining activity will help further identify this information as industrial areas are on-boarded.

Id.

Given the uncertainty surrounding the scope of work, the FOPR provided the following description of the implementation plan:

The implementation schedule is iterative, and includes the following benchmarks as a minimum:

- a Government-defined Minimum Viable Product (MVP) capability
- an Initial Operating Capability (IOC) and
- a Full Operating Capability (FOC)

After MVP is achieved, the Contractor and Government collaborate to describe an IOC, with final definition accepted by the Government.

After IOC is achieved, the Contractor and Government collaborate to describe a Full Operating Capability (FOC), with final definition accepted by the Government.

The Government provides the following desired timeframes for MVP, IOC, and FOC:

- MVP accomplished no later than (NLT) the end of Option Year 1
- IOC NLT the first 6 months of Option Year 2
- FOC NLT the last 6 months of Option Year 2

Id. at 30, SOO at ¶ 8.4: Implementation Scope and Plan. The MVP effort would encompass 10 to 15 devices and/or machines. FOPR at 30.

Accenture and IBM submitted the only two proposals. AR, Tab 27, Fair Opportunity Decision Document (FODD) at 1. The table below summarizes the agency's evaluation of those proposals:

Factor/Subfactor	Accenture	IBM
Factor 1 – Technical Proposal		
Gate 1		
Sub1: IIoT Enterprise Platform SolaaS Relevant Magnitude of Effort(s) – Recency	GO	GO
Sub1: IIoT Enterprise Platform SolaaS Relevant Magnitude of Effort(s) – Relevancy	GO	GO
Gate 2		
Sub2: Technical Approach (including PWS) – Rating	Acceptable	Outstanding
Sub2: Technical Approach (including PWS) – Confidence	Moderate	High
Sub3: Enterprise Product Description – Rating	Acceptable	Acceptable
Sub3: Enterprise Product Description – Confidence	Moderate	Moderate
Factor 2 – Cost/Price	\$24,548,410	\$49,994,891

Id. at 120. The agency evaluated both offerors' prices as reasonable, balanced, and realistic. *Id.*

The contracting officer (CO), who was the decision authority (DA) for this procurement, stated that, in making the source selection, he “did not merely focus on the differences in adjectival technical ratings” but also “focused on any specific advantages within technical that a higher priced Offeror may have over a lower priced Offeror and determined whether those advantages are beneficial enough to the Government to justify a higher price.” *Id.* at 121. The DA noted that Accenture had a price advantage of \$25,446,481, but that IBM’s proposal was higher technically rated by virtue of its advantage under the technical approach subfactor. *Id.*

For the purposes of the best-value tradeoff analysis, the DA found the proposals to be “equal” under the enterprise product description subfactor. *Id.* at 121. Under the technical approach subfactor, the DA found that IBM’s proposal provided several advantages over Accenture’s. *Id.* at 121-122. The DA noted various strengths that contributed to IBM’s proposal being evaluated as outstanding, with high confidence, under that subfactor. *See id.* at 122. In contrast, the DA found that Accenture’s proposal “indicated an adequate technical approach and understanding of the requirements but did not provide any outstanding features.” *Id.* Although IBM’s proposal was superior to Accenture’s, the DA did not find that superiority to “offset the price difference,” even when considering that the technical approach subfactor was “more important than price.” *Id.* at 123. The DA found that Accenture’s proposal

represented the best value to the government. *Id.* The DA directed award to Accenture, and this protest followed.¹

DISCUSSION

IBM asserts that the agency unreasonably evaluated Accenture's proposal as go under Gate 1, that the solicitation contained latent ambiguities regarding the number and complexity of devices, as well as the magnitude of the effort to be priced under the FFP CLINs. In additions, IBM asserts that--for various reasons--the Air Force's evaluation of Accenture's price was unreasonable, that the agency engaged in misleading discussions, and that the agency conducted a flawed best-value tradeoff analysis. For the reasons discussed below-- except for one challenge to the agency's price realism evaluation--we dismiss or deny all of these allegations; we sustain one challenge to the price realism evaluation, where there is a reasonable possibility that the protester was prejudiced by an evaluation error.²

In reviewing protests challenging the evaluation of proposals in a task order competition, we do not conduct a new evaluation or substitute our judgment for that of the agency but examine the record to determine whether the agency's judgment was reasonable and in accord with the evaluation criteria. *Booz Allen Hamilton, Inc.; Leidos Inc.*, B-410032.4 *et al.*, Mar. 16, 2015, 2015 CPD ¶ 108 at 5. A protester's disagreement with an agency's judgment is not sufficient to establish that an agency acted unreasonably. *STG, Inc.*, B-405101.3 *et al.*, Jan. 12, 2012, 2012 CPD ¶ 48 at 7.

Evaluation of Awardee's Proposal Under Gate 1

IBM challenges the reasonableness of the Air Force's evaluation of Accenture's proposal as go under the Gate 1 subfactor. Under that subfactor, an offeror was required to provide evidence that it had delivered, either as a prime or in a teaming relationship, a successful IIoT Platform in a SolaaS model that incorporated two or more geographically separated locations, encompassing a multi-varied manufacturing environment consisting of 500 or more dissimilar manufacturing machines and support devices. FOPR, attach. 3, IIoT Enterprise Platform at 72. Offerors were required to "provide at least one, but no more than three contract examples, where, as a Prime or in

¹ The agency issued the task order to Accenture in the amount of \$24,548,410. Although the task order will be in support of a Department of Defense organization, the Alliant 2 GWAC is a civilian agency indefinite-delivery indefinite-quantity contract awarded by General Services Administration. As such, the protest is within our Office's jurisdiction because the value of the order to be issued exceeds \$10 million. See 41 U.S.C. § 4106(f); *Analytic Strategies LLC; Gemini Indus., Inc.*, B-413758.2, B-413758.3, Nov. 28, 2016, 2016 CPD ¶ 340 at 4-5.

² Our decision discusses most, but not all, of IBM's allegations; we have, however, considered all of the protester's allegations; any allegations that we did not directly address we found to be without merit.

a teaming relationship, they have met the [Gate 1] criteria.” *Id.* The RFP instructed offerors that references “can include experience from both Prime and Sub relationships, but at least one (1) reference must be from the Offeror in the role of Prime Contractor.” *Id.*

Accenture’s proposal provided three references in response to the above requirement, one of which was a contract for the [DELETED] Digital IoT Platform. The protester raises challenges to each of the awardee’s references, but we address only IBM’s challenges to the evaluation of the [DELETED] contract because (1) offerors were required to produce only one reference, and (2), as discussed below, we find that the [DELETED] contract conformed to the FOPR’s requirements and that the agency reasonably evaluated Accenture’s proposal as good based on it.

Accenture’s proposal included the following description of the [DELETED] contract:

The [DELETED] platform is a serverless Azure-based intelligent edge system. The platform supports a multi-varied environment that greatly exceeds the minimum requirement of 500 devices across at least two geographically separated locations required for the ATHENA platform. The platform processes more than 90 billion IoT data points/year across more than 40,000 IoT controllers/devices from client locations across the globe, providing actionable insights to save clean water for business to business (B2B) customers. Accenture provided full Solution as a Service (SolaaS) support on the [DELETED] effort, from initial solution design and platform implementation to ongoing sustainment of platform and business operations.

The platform solution delivered by Accenture helped [DELETED] to fundamentally transform business operations and bundle chemicals, services, and digital product offerings for clients. Before [DELETED], they manufactured and sold chemicals and provided services to their clients. With the [DELETED] platform, they are able to use data and analytics to generate insights for their customers. They sell these insights through their suite of digital services allowing customers to achieve water management and sustainability goals.

AR, Tab 10, Accenture Technical Proposal at 13.

The protester first alleges that the agency’s evaluation of the [DELETED] contract as satisfying the FOPR’s requirements was unreasonable because “Accenture was not the prime contractor, but rather worked with two sets of teaming partners.” Comments and Third Supp. Protest at 13. This is critical, IBM asserts, because the solicitation “expressly distinguished between experiences either as a ‘Prime or in a teaming relationship,’ and required that ‘at least one (1) reference must be from the Offeror in the role of Prime Contractor’--i.e., not a teaming relationship.” *Id.*, quoting FOPR at 72.

The Air Force argues that the solicitation language requiring that one reference be from the offeror in the role of prime contractor was “made in the context of the prior sentence inviting offerors to submit experience from their own performance history, or experience belonging to their subcontractor.” Supp. MOL at 19. In other words, the agency maintains, an offeror in the role of prime contractor “could provide experience from their own portfolio or their ATHENA subcontractor teammates, but at least one submitted reference must belong to the prime contractor themselves (as opposed to a subcontractor).” *Id.* Furthermore, the Air Force argues, the RFP specifies that the references submitted to meet the substantive experiential requirements could be met through an [offeror’s] prior work ‘either as a Prime or in a teaming relationship.’” *Id.* Thus, the Air Force contends, IBM’s interpretation of the solicitation’s terms “would introduce a patent contradiction into the RFP evaluation criteria where offerors are told in the same paragraph that that they can pass Gate 1/Subfactor 1 by submitting just one reference for prior experience performed in a non-prime role ‘in a teaming relationship’ yet are also told that the experience [must] only be as ‘Prime Contractor.’” *Id.* at 20.

We agree with the agency that, when read in the context of the surrounding solicitation language, the requirement for a reference from the “prime contractor” is more reasonably interpreted as distinguishing between prime and subcontractor experience, as opposed to distinguishing between prime experience inside and outside of a teaming relationship. Likewise--and more importantly--we agree with the Air Force that IBM’s interpretation of the RFP as requiring Gate 1 references where the offeror was the prime contractor is patently at odds with solicitation language permitting references where the offeror performed as part of a teaming relationship. An offeror has an affirmative obligation to seek clarification of a patent ambiguity prior to the due date for proposal submission. *Pitney Bowes, Inc.*, B-294868, B-294868.2, Jan. 4, 2005, 2005 CPD ¶ 10 at 5. When a patent ambiguity exists but is not challenged prior to the proposal submission deadline, we will not consider subsequent untimely arguments asserting the protester’s own interpretation of the ambiguous provision. *FFLPro, LLC*, B-411427.2, Sept. 22, 2015, 2015 CPD ¶ 289 at 10.

With regard to the quality of the reference itself, IBM further asserts that the [DELETED] reference does not meet the solicitation’s requirements because (1) “[DELETED] is not in the business of manufacturing anything,” and (2) “the [DELETED] platform has nothing to do with manufacturing.”³ Second Supp. Protest at 4. In response to IBM’s argument that [DELETED] is not in the business of manufacturing, Accenture argues that [DELETED] itself does not need to be a manufacturer in order for Accenture’s

³ Accenture requested dismissal of this allegation as untimely. Intervenor’s Supp. Comments at 20-21. In its comments and supplemental protest, IBM asserted that “[p]ublicly available information calls into question whether [DELETED] was actually deployed in a multi-varied manufacturing environment or Accenture’s role in delivering [DELETED] in such a manufacturing environment.” Comments and First Supp. Protest at 9 n.12. This allegation, filed within 10 days of the documents giving rise to it, was timely. 4 C.F.R. § 21.2(a)(2). After receipt of Accenture’s unredacted proposal, IBM was able to sharpen its allegation.

[DELETED] contract to meet the Gate 1 criteria. Intervenor's Supp. Comments at 22. Rather, the awardee asserts, "the Gate 1 requirements mandate that the IIoT network Accenture set up be deployed in a 'manufacturing environment' and track data pulled from 'manufacturing machines and support devices.'" *Id.*, quoting FOPR at 72. We agree with the intervenor that the protester unreasonably reads into the solicitation a requirement that [DELETED] itself must be a manufacturer; thus, even if [DELETED] is not a manufacturer--which the agency does not concede--that would provide no basis to sustain the protest.

Regarding the second prong of its argument, IBM asserts that "[DELETED] does not encompass a manufacturing environment or manufacturing devices." Comments and Third Supp. Protest 14. Rather, the protester argues, [DELETED] "more accurately encompasses a clean water management environment, with the controllers/devices contained within having nothing to do with manufacturing or production of anything." *Id.* Moreover, IBM asserts that "Accenture carefully omitted the word 'manufacturing' from its description" of the [DELETED] contract." *Id.* at 15, citing AR, Tab 10, Accenture Technical Proposal at 10.

Accenture's proposal states that [DELETED]'s clients "in various industries including food and beverage, gas and petroleum, and mining" have been able to use the data and analytics generated by the [DELETED] IoT to achieve water management and sustainability. AR, Tab 10, Accenture Technical Proposal at 13. Accenture argues that, "[b]eyond the distinction that the devices must in some way relate to the manufacturing going on in the 'manufacturing environment,' the specific type of manufacturing or manufacturing-related support devices, or the way in which the devices relate to manufacturing, was not specified in the FOPR or narrowly construed." Intervenor's Supp. Comments at 10. Accenture asserts that the manufacturing environments in which [DELETED] had been deployed--food and beverage, gas and petroleum, and mining--satisfy the solicitation's requirement. See *id.* at 6-8.

Similarly, the Air Force argues that "the term 'manufacturing environment' is not defined in the solicitation as being limited to any particular [North American Industry Classification System] code or industry standard." Supp. Contracting Officer's Statement (COS) at 7. The agency contends that it "was looking for multiple machine types, connected in different ways, providing various functions, towards the production of an end-product."⁴ *Id.* The agency asserts that "[t]he manufacturing of clean water and related chemicals and products to expand access to clean water via water management constitutes a 'manufacturing environment' as the term was referenced and intended under the Solicitation." *Id.* at 8. Moreover, notwithstanding IBM's insistence that [DELETED] is not in the business of manufacturing anything, the Air Force contends that "a simple internet search would prove that [DELETED] is in fact in the

⁴ IBM was well aware of this, the agency asserts, because the protester's "own lead past performance reference is for a commercial contract with L'Oréal, a company that produces cosmetics and haircare products—products quite far afield of the types of production work relevant to the Agency's requirements." *Id.*

business of manufacturing. . . . a wide range of environmentally friendly products, such as kitchen cleaners, liquid hand soaps, dishwasher detergents, disinfectants, carpet cleaners, glass cleaners, and more.” Second Supp. COS at 15-16.

In summary, we addressed above IBM’s contention that the evaluation was unreasonable because Accenture was not the prime contractor on the [DELETED] effort, and we found that allegation to be without merit. The record supports Accenture’s contention that IBM unreasonably reads into the solicitation a requirement that [DELETED] itself must be a manufacturer; the solicitation contains no such requirement. The record also supports the intervenor’s and the agency’s contention that the environments in which [DELETED] has placed the [DELETED] IIoT satisfy the solicitation’s requirement that the IIoT have been deployed in a manufacturing environment. Accenture’s proposal indicates that [DELETED] places operational controllers in various industries, including food and beverage, gas and petroleum, and mining; those are manufacturing environments. The record provides no support for IBM’s various challenges to the reasonableness of the agency’s evaluation of Accenture’s proposal as go under Gate 1, and we deny this allegation.

Solicitation Ambiguity

IBM asserts that the solicitation was latently ambiguous in two respects: first, the solicitation was unclear as to the number and complexity of devices that would be involved in contract performance, Protest at 23; and, second, “the Air Force did not directly address [question No. 19] by explaining where offerors should plan to execute the effort estimated during the baselining CLIN.” Comments and First Supp. Protest at 13. The Air Force does not concede that the solicitation was ambiguous, see Supp. Memorandum of Law (MOL) at 6, but argues that, “to the extent there was any question regarding the Agency’s response to Question 19, IBM’s arguments are untimely challenges to patent solicitation improprieties.” Supp. COS at 11.

An ambiguity exists where two or more reasonable interpretations of the terms or specifications of the solutions are possible. *KMK Constr., Inc.*, B-418639.2, Dec. 29, 2020, 2021 CPD ¶ 45 at 5. A patent ambiguity exists where the solicitation contains an obvious, gross, or glaring error, while a latent ambiguity is more subtle; a latent ambiguity exists when, for example, the solicitation is susceptible to two reasonable interpretations that do not rely on conflicting solicitation terms. See e.g., *Ashe Facility Services, Inc.*, B-292218.3, B-292218.4, Mar. 31, 2004, 2004 CPD ¶ 80 at 10-12 (finding latent ambiguity in solicitation where protester’s interpretation did not conflict with other solicitation provisions and the ambiguity only reasonably came to light in the context of learning the basis for the agency’s evaluation). Where a patent ambiguity in a solicitation is not challenged prior to the submission of proposals, we will dismiss as untimely any subsequent challenge to the meaning of the solicitation term. 4 C.F.R. § 21.2(a)(1); *Simont S.p.A.*, B-400481, Oct. 1, 2008, 2008 CPD ¶ 179 at 4. That is true even where the solicitation’s terms were clearly flawed. *KMK Constr., Inc.*, *supra*. Where, before the deadline for proposal submission, a protester is aware of an ambiguity, such as a solicitation’s lack of clarity, that ambiguity is patent, and a protest

of the ambiguity is timely only if filed before the proposal deadline. *Cybergenic Sys., LLC*, B-421213, Jan. 19, 2023, 2023 CPD ¶ 31 at 4.

As discussed below, we find that the protester's allegations here pertain to patent, as opposed to latent, ambiguities. Accordingly, because they were not raised prior to the closing date for receipt of proposals, we dismiss them as untimely challenges to the solicitation's terms.

Overview

The next issue we consider is the protester's assertion that the solicitation was ambiguous with regard to the number and complexity of devices. In reviewing the solicitation, it was clear that the requirement was unknown in that regard. The Air Force thus structured the procurement with ongoing baselining activities, during which the agency, in cooperation with the contractor, would determine the magnitude of work for each location--the number of users, and the number and complexity of devices.

Number and Complexity of Devices

The Air Force advised prospective offerors that "[t]he best estimate [of the number of devices] right now, within a large variation, is between 5,000 and 7,500 devices. The Baselining activity will help further identify this information as industrial areas are onboarded." AR, Tab 7, FOPR amend. 1 at 68 (responding to question No. 24). IBM's protest argues that "the SOO provided little clarity in the way of complexity of the devices in the environment." Protest at 22. IBM describes as "vague" the direction that the solicitation provided regarding the complexity of devices, and the protester argued that the Air Force had not "provided a precise breakdown or even an estimate of the composite complexity of equipment." *Id.* The protester asserts that the solicitation lacked "detail regarding the quantity and complexity of devices" that "put the onus on offerors to nevertheless submit a realistically priced proposal." *Id.* at 23.

The Air Force contends that "[t]he solicitation, specifically the SOO, stated up front that, at the time the solicitation was issued, the Agency did not know what machines/devices would be added as part of the baselining process." COS at 25, *citing* AR, Tab 7, FOPR amend. 1 at 49. The agency argues that "IBM's protest allegations in relation to complexity are related to issues which the Agency openly described in the solicitation and the CLIN for baselining was not included as part of the Total Evaluated Price." COS at 25, *citing* AR, Tab 7, FOPR amend. 1 at 80-85. The Air Force contends that "[t]he unknown variables for quantity of machines, similar to the unknown variables for complexity, is one of the reasons why the baselining process was not included as part of the TEP"; it was during baselining that the quantity and complexity of machines would be identified. COS at 25-26; *see* AR, Tab 7, FOPR amend. 1 at 68. In the agency's view, the range of "5,000 to 7,000" was not a term of the solicitation; it was a "best estimate," and "[e]stimations have a very wide variance." *Id.* at 26, *quoting* AR, Tab 7, FOPR amend. 1 at 68.

IBM aptly describes the solicitation's lack of clarity regarding the number and complexity of devices. Because IBM viewed the number and complexity of devices as critical solicitation terms, and because the FOPR provided no meaningful guidance as to either, IBM was required to protest that alleged patent lack of clarity prior to the closing time for receipt of proposals. Where a protester fails to challenge an alleged patent ambiguity prior to the submission of proposals, we will dismiss as untimely any subsequent challenge to the solicitation's term. 4 C.F.R. § 21.2(a)(1); see *Glock, Inc.*, B-414401, June 5, 2017, 2017 CPD ¶ 180 at 14 (finding a lack of clarity on the face of the solicitation as to the number of handguns to be evaluated was a patent ambiguity). The allegation that the solicitation was ambiguous with regard to the number and complexity of devices is dismissed as an untimely challenge to the terms of the solicitation.

Magnitude of the Fixed-Price Scope of Work

Throughout this procurement--including the Air Force's responses to questions--the issue of the number and complexity of devices was inextricably linked with the issue of how to price the various CLINs. IBM asserts that "the Agency's answer in Q&A No. 19 [which addressed this issue] was a non-sequitur" and that the "**Agency's response did not directly address [the] question.**" Comments and Third Supp. Protest at 21. The agency argues that "Q&A 19 raised the same issue that IBM now claims was ambiguous: considering the Agency did not know the types and complexity of devices, and this information would be determined during baselining, how did the Government want offerors to account for the additional effort identified during baselining?" Supp. COS at 12. The Air Force asserts that the question contained alternatives: "include [the additional work] under the Baselining CLINs," or "incorporate the additional effort via Change Proposals that modified the appropriate fixed price CLINs[.]" *Id.*, citing AR, Tab 7, FOPR amend. 1 at 66-67. In response, the Air Force argues that it provided a clear answer: it would change CLIN X004 to an unpriced cost-reimbursable CLIN under which the work could be performed, and this change would "address the concern detailed in this comment." Supp. MOL at 6. In other words, the agency contends, "the additional effort identified during baselining should not be incorporated into the baselining CLIN and should not be accounted for using Change Orders--it should be priced and performed under CLIN X004." *Id.*

Accenture did just that; the awardee priced the additional effort identified during baselining under CLIN x004. IBM asserts that the record provides no support for the agency's argument that offerors could assign work that takes place after baselining to the cost-reimbursable Platform Installation CLIN--x0004. Comments and First Supp. Protest at 17-18 n.22. For example, IBM argues, "CLIN x004 [Platform Installation] was limited to effort for three SOO requirements: 5, 8, and 9.7." *Id.*, citing AR, Tab 8, FOPR amend. 2 at 1-6. No other CLIN covered performance of these same three requirements. Comments and First Supp. Protest at 18 n.22. Assigning any other work to CLIN x004 was not permitted under FORP amendment 2, IBM contends. See *id.*

The Air Force, however, provided clear direction in response to question No. 19: "The Platform Installation CLIN X0004 will move from FFP pricing to CPFF pricing. This will

address the concern detailed in this comment [regarding where to price the additional effort identified during baselining].” AR, Tab 7, FOPR amend. 1 at 67. In other words, because the requirement, beyond baselining, was undefined, offerors could price the work identified during baselining in the cost-reimbursable CLIN x004. To the extent IBM contends that this direction contradicted FOPR amendment 2, which assigned specific SOO requirements to specific CLINs, including CLIN x004, any inconsistency was patent. IBM was thus required to challenge the terms of the FOPR prior to the deadline for proposal submission. 4 C.F.R. § 21.2(a)(1). This allegation is also dismissed as untimely.

In sum, the solicitation put offerors on notice that the quantity of work was unknown and that the baselining surveys--a collaborative effort between the government and the contractor--would determine the number of users and the number and types of devices. FOPR at 49-50. The Air Force advised offerors that they could price the “effort identified during Baselining survey” in Platform Installation CLIN x004, which the agency changed from FFP pricing to CPFF. AR, Tab 7, FOPR amend. 1 at 66-67. If this was unclear to IBM, or if the protester found this amendment inconsistent with other solicitation provisions, then IBM was required to ask questions or file protests prior to the solicitation closing date. For that reason, we dismiss these related allegations as untimely challenges to the terms of the solicitation. 4 C.F.R. § 21.2(a)(1).

Evaluation of Awardee’s Proposed Price

IBM asserts various challenges to the Air Force’s evaluation of Accenture’s proposed price. The protester alleges that Accenture’s proposal took exception to the requirement to propose fixed prices. Comments and First Supp. Protest at 22. IBM contends that the Air Force unreasonably evaluated the realism of Accenture’s proposed prices. *Id.* at 24. Lastly, IBM asserts that the agency overlooked that Accenture’s proposal failed to comply with the solicitation’s requirements for detailed information regarding proposed subcontractors, including pricing information. *Id.* at 37. We address each of these allegations and find that the challenge to the agency’s price realism evaluation has merit.

Failure to Propose Fixed Prices

IBM argues that Accenture’s proposal took exception to the requirement to propose fixed prices and should have been rejected on that basis.⁵ Comments and First Supp.

⁵ Accenture argues that IBM’s proposal contained assumptions similar to Accenture’s, and that IBM’s proposal “added that it would utilize a change request procedure to address any impacts on cost, schedule, or deliverables.” Intervenor’s Supp. Comments at 31, *citing* AR, Tab 18, IBM Proposal Revisions at 204 (noting that, “[s]hould the level of effort desired exceed the labor hours and price proposed, IBM works with the AFSC Athena [contracting officer’s representative] to follow the procedures identified in IBM’s

Protest at 22. The protester asserts that “Accenture’s assumptions clearly state that all effort beyond the MVP phase would be performed under the cost-reimbursable CLIN x004. (See, e.g., AR, Tab 15, Accenture Changed Proposal Pages at 127 ([DELETED].)”)” *Id.* IBM argues that “[t]he requirement to propose fixed prices is a material term or condition of a solicitation requiring such pricing.” *Id.*, quoting *Solers, Inc.*, B-404032.3, B-404032.4, Apr. 6, 2011, 2011 CPD ¶ 83 at 4. IBM further argues that a proposal that takes exception to a solicitation’s material terms and conditions should be considered unacceptable and may not form the basis for an award. Comments and First Supp. Protest at 22-23, citing *IBM U.S. Fed., a division of IBM Corp.; Presidio Networked Sols., Inc.*, B-409806 *et al.*, Aug. 15, 2014, 2014 CPD ¶ 241 at 10.

The Air Force asserts that “[n]owhere in Accenture’s’ proposal did the company indicate that its fixed price CLINs encompassed only the MVP phase.” Supp. COS at 18. To the contrary, the agency contends that “Accenture’s proposal included fixed prices that extended beyond the MVP phase as indicated within their price.” *Id.*, citing AR, Tab 15c, Accenture Interchange Round 2, Vol. 3. More important, the agency contends that the protester mischaracterizes the awardee’s proposal, which reiterated what was provided in the solicitation, namely, that “[DELETED].” Supp. COS at 22, quoting Accenture Changed Proposal Pages at 127. According to the agency, this is a direct paraphrase of question No. 19: the “[DELETED].” See Supp. COS at 22; see also AR, Tab 7, FOPR amend. 1 at 66-67.

IBM argues that Accenture disregarded the “parametric data” provided by the Air Force, namely, that offerors would be required to support 5000 devices. See Comments and Third Supp. Protest at 33; see also AR, Tab 7, FOPR amend. 1 at 66-67 (noting that “[t]he best estimate right now [for the number of devices], within a large variation, is between 5,000 and 7,500 devices”). As discussed above, IBM was keenly aware of the solicitation’s lack of clarity regarding that “parametric data.” See Protest at 22 (noting that “the SOO provided little clarity in the way of complexity of the devices in the environment”). IBM argues that Accenture also disregarded the solicitation’s CLIN structure, which, as discussed above, IBM asserts patently contradicted the Air Force’s response to question No. 19. See Comments and Third Supp. Protest at 33. The essence of IBM’s argument is that the awardee’s pricing assumptions are inconsistent with terms of the solicitation that the protester itself has identified as being patently ambiguous. Accenture argues that its pricing assumptions do conform to the solicitation’s terms, in as much as they are “consistent with Q&A 19 and the stated purpose of the baselining efforts for the Agency and the ATHENA contractor to identify the full scope of the requirements.” Intervenor’s Supp. Comments at 31, citing AR, Tab 7, FOPR amend. 1 at 66-67. We agree with the intervenor.

Change Control Procedure and execute a formal contract modification”). We need not resolve this issue because, as discussed below, we find this allegation untimely.

Where a patent ambiguity is not challenged prior to submission of proposals, we will dismiss as untimely any subsequent protest assertion that is based on one of the alternative interpretations as the only permissible interpretation.⁶ *Bank of Am.*, B-287608, B-287608.2, July 26, 2001, 2001 CPD ¶ 137 at 10. As discussed above, we dismissed as untimely the allegations that the solicitation was latently ambiguous regarding the quantity and complexity of the devices and the magnitude of work to be performed under the fixed-price and cost-reimbursable CLINs. The allegation that the awardee failed to comply with the solicitation's requirement for fixed-prices is derivative of those dismissed allegations, and this protest ground is likewise dismissed.

Price Realism Evaluation

IBM asserts three challenges to the agency's evaluation of the realism of Accenture's proposed prices. First, the protester asserts that the evaluation does not reflect that Accenture resolved concerns raised by the Air Force during its discussions with Accenture about the realism of Accenture's proposed prices. Next, IBM challenges the agency's evaluation of the realism of Accenture's proposed prices under CLINs x002 and x006. Finally, IBM contends that the Air Force unreasonably compared the offerors' prices as part of the price realism assessment. Our discussion below finds merit in the allegation that the Air Force unreasonably evaluated the realism of Accenture's proposed prices under CLINs x002 and x006.

Price realism is an assessment of whether prices are too low, such that there may be a risk of poor performance. *Mortgage Contracting Servs., LLC*, B-418483.2, B-418483.3, Sept. 10, 2020, 2020 CPD ¶ 340 at 9. Where a solicitation anticipates the award of a task order with fixed-price CLINs, the realism of the proposed CLIN prices is not ordinarily considered, because the risk and responsibility for contract costs is on the contractor. *Id.* at 9-10. Nonetheless, a solicitation may provide for a price realism analysis for purposes of measuring an offeror's understanding of the solicitation requirements or assessing risk. *Id.* at 10.

Where a solicitation provides for a price realism analysis, the depth of an agency's analysis is within the sound exercise of the agency's discretion, and an agency is not obligated to verify each and every cost/price element of an offeror's proposal. *Id.* Our review of an agency's price realism analysis is limited to determining whether it was reasonable and consistent with the terms of the solicitation. *Id.* That an offeror's price is below a government cost estimate does not require the agency to conclude that the price is unrealistically low, because we have recognized that an agency may find even a below-cost price to be realistic. *Id.* A protester's disagreement with the nature and

⁶ In contrast, we may sustain a protest regarding the reasonableness of an agency's price realism analysis where the solicitation contained a latent ambiguity, and, as a consequence, the offerors were not able to compete intelligently and on a relatively equal basis. *Coastal Int'l Sec., Inc.*, B-411756, B-411756.2, Oct. 19, 2015, 2015 CPD ¶ 340 at 15.

extent of an agency's price realism methodology does not provide a basis on which to sustain a protest. *NextGen Fed. Sys., LLC, B-420456, et al.*, Apr. 14, 2022, 2022 CPD ¶ 99 at 8.

First, the protester asserts that Accenture "neglected to fully resolve the Agency's concerns" that certain fixed-price CLINs "were below the threshold the Agency utilized to assess realism," yet the awardee "suffered no evaluation consequence." Comments and First Supp. Protest at 24. IBM contends that "the Agency abandoned its realism concerns without explanation, rendering the evaluation unreasonable." *Id.* at 25. Because "none of the changes Accenture made to its [basis of estimate (BOE)] in response to the first [interchange notice (IN)] contain any 'rationale' to justify CLIN prices [DELETED] the [independent government estimate (IGE)] values," IBM asserts that GAO should find that the Air Force failed to properly document its price realism evaluation and sustain the protest on that basis. *Id.* at 28.

The Air Force argues that it provided Accenture with various ways to respond to the agency's price INs. Supp. COS at 29. The agency advised Accenture that it could keep its price as proposed, verifying that the price was correct and providing a complete explanation to justify the apparently low price. AR, Tab 13, Accenture Interchanges at 4. Alternatively, if the proposed prices were incorrect, Accenture could "provide the corrected prices with a Basis of Estimate or explanation of the revised proposed prices along with an updated Price Matrix." *Id.* In response to the INs, the agency notes that Accenture elected to increase its prices and submit a revised BOE. Supp. COS at 29, *citing* AR, Tab 14, Accenture Interchange Responses at 6-8; AR, Tab 15, Accenture Changed Proposal Pages. The Air Force contends that IBM's focus on Accenture's "rationale" ignores the fact that Accenture could address the INs by increasing its proposed price, which Accenture did. See Supp. COS at 29-30.

IBM asserts that the "minor revisions [to labor hours and thus price] did little to resolve the realism problems that prompted the IN." Comments and Third Supp. Protest at 36. In the protester's view, "none of these various adjustments actually addressed the unrealistic CLIN prices." *Id.* While IBM claims the price revisions by Accenture were minor, the Air Force notes that, in response to the INs, "Accenture's overall TEP increased significantly by approximately \$[DELETED], from \$[DELETED] to \$[DELETED]." Supp. COS at 30, *citing* AR, Tabs 12a, Accenture Initial Price Analysis Workbook; 17a, Accenture Round 1 Interchange Price Analysis Workbook; and 17b, Accenture Final Price Analysis Workbook. The record demonstrates that Accenture responded to the INs in one of the ways offered by the agency, and that, in so doing, the awardee raised its TEP significantly. Here, the protester's objections do not demonstrate that the agency's concerns went unanswered or that the Air Force's price realism evaluation was unreasonable. This allegation is denied.⁷

⁷ IBM also asserts that Accenture's proposed prices are unreasonable because "Accenture's proposed labor rates exceeded the applicable Alliant 2 ceiling." Comments and First Supp. Protest at 35. The Air Force argues that the Alliant 2 Master

Next, IBM challenges the agency's evaluation of the realism of Accenture's proposed prices under CLINs x002 and x006. Accenture's proposal included [DELETED] for CLIN x008, Asset Management, and [DELETED].⁸ AR, Tab 15, Accenture Changed Proposal Pages at 149. IBM contends that "the Agency recognized that Accenture's proposed unit price for CLIN x008 was \$[DELETED]% lower than the IGE, which was approximately \$[DELETED], but did not take issue with how Accenture priced its proposal." Comments and Supp. Proposal at 30, *citing* AR, Tabs 12a, Accenture Initial Price Analysis Workbook; 17a, Accenture Round 1 Interchange Price Analysis Workbook; 17b, Accenture Final Price Analysis Workbook; and 14, Accenture Interchange Responses. Despite recognizing that Accenture included the price for the work associated with CLIN x008 in CLINs x002 and x006, IBM argues that the Air Force never accounted for this reallocation of price when evaluating the realism of CLINs x002 and x006. Comments and Supp. Protest at 30. IBM asserts that, because the price realism evaluation did not consider the addition of the price of CLIN x008 to CLINs x002 and x006, the Air Force understated how much lower than the IGE those two prices were. See *id.* at 31. IBM argues that "this infirmity" provides a basis on which to sustain the protest.

The Air Force asserts that it considered the assumption in Accenture's proposal that the price of CLIN x008 was included in the prices for CLINs x002 and x006. Supp. COS at 31. The agency contends that, "[a]lthough IBM would have preferred that the Agency specifically document its analysis of every aspect of every CLIN that the evaluators considered in reaching their realism analysis, this is not what the FAR requires." *Id.* at 31-32.

Notwithstanding the agency's explanation, the record supports IBM's contention that the Air Force's price realism evaluation compared Accenture's proposed prices for CLINs x002 and x006 against an IGE that did not account for the approximately \$[DELETED] price of CLIN x008. See Comments and First Supp. Protest at 30-31. IBM argues that, "[i]n actuality, the CLINs x002 and x006 prices were much lower than the Agency appreciated because of this evaluation shortcoming." *Id.* at 31. The protester asserts

Contract "ceilings" are not applicable to this competition, Supp. COS at 35, and the protester did not seek to rebut, or otherwise respond to, that assertion. See Comments and Third Supp. Protest at 41-42. Because the record fails to establish that the Alliant 2 ceilings were applicable to this competition, IBM's allegation that the agency's price reasonableness evaluation failed to consider that the awardee's labor rates exceeded those ceilings fails to state a valid basis of protest. 4 C.F.R. § 21.5(f).

⁸ Accenture's proposal included this assumption:

[DELETED]

AR, Tab 15, Accenture Changed Proposal Pages at 149.

that GAO will sustain protests challenging an agency's price realism evaluation where the Agency's calculations are flawed. *Id.*, citing *GiaCare and MedTrust JV, LLC*, B-407966.4, Nov. 2, 2016, 2016 CPD ¶ 321 at 11.

Neither the awardee nor the agency dispute that the Air Force's IGE for CLIN x008 was \$[DELETED], which amounts to approximately [DELETED] percent of the awardee's total evaluated price. See Awardee's Comments on Supp. AR at 32-33; see also Supp. MOL at 31-32. Rather, the awardee argues that, "[c]onsistent with a valid realism analysis, the Agency focused on whether the proposed price reflected an understanding of the requirements." Intervenor's Comments on Supp. AR at 32. Similarly, the agency argues that "the evaluators considered the fact that Accenture's technical approach included efficiencies that would allow the individuals performing the System Engineering CLIN (X002) and the Platform Sustainment CLIN (X006) to accomplish the requirements of CLIN X008." Supp. COS at 31, citing AR, Tab 15, Accenture Changed Proposal Pages, at 149.

The intervenor's and the agency's arguments might find traction if the record showed that this is what the agency had in fact done. There is no record, however, of any such independent consideration of the protester's understanding of these CLINs or record of the agency's consideration of efficiencies proposed by the awardee for these CLINs.⁹ To the contrary, the record reflects that the agency evaluated offerors' prices on a CLIN by CLIN basis, comparing them to an IGE the agency prepared for each CLIN. Such comparisons were an integral part of the agency's price analysis. See, *i.e.*, AR, Tab 20a, IBM Initial Price Analysis Workbook. In doing this, the Air Force failed to properly compare Accenture's proposed prices for CLINs x002 and x006--inclusive of the requirements of CLIN x008--and the corresponding prices in the IGE, likewise incorporating the price for CLIN x008. By failing to use a basis of comparison that matched the awardee's reallocation of the work for CLIN x008 to CLINs x002 and x006, the agency's price realism evaluation was based on an understated IGE and reflected a classic apples to oranges comparison. Accordingly, we agree with the protester that the agency's price realism evaluation unreasonable in this respect.

Prejudice is an essential element of every viable protest; our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions--that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. *Trident Vantage Sys., LLC; SKER-SGT Eng'g & Sci., LLC*, B-415944 *et al.*, May 1, 2018, 2018 CPD ¶ 166 at 22. Where there is no basis for our Office to know what the ultimate source selection might have been, had the evaluation errors not occurred, we

⁹ While the agency cites to Accenture's proposal for purported "efficiencies," the cited section of the proposal does nothing more than indicate that Accenture had shifted the hours for CLIN x008 to CLINs x002 and x006 and noted that [DELETED]. AR, Tab 15, Accenture Changed Proposal Pages, at 149.

resolve any doubts regarding prejudice in favor of a protester, because a reasonable possibility of prejudice is a sufficient basis for sustaining a protest. *Id.*

Here, the IGE for the unaccounted for CLIN x008 was \$[DELETED], which, as noted above, was a significant percentage of the awardee's total price. Moreover, the IGE for CLIN x008 is more than [DELETED] percent of the awardee's total price for CLINs x002 and x006 added together.¹⁰ Had the agency reasonably considered the cost of performing the work for CLIN x008 when it considered the awardee's prices for CLINs x002 and x006, we cannot know what conclusions the agency would have drawn about the realism of the awardee's price. As we discuss below, the agency traded off Accenture's significant proposed price advantage against the technical superiority of IBM's proposal. Here, there is no basis for our Office to know whether, but for the agency's flawed price realism evaluation, the Air Force would have made the same source selection. For that reason, we sustain the protest on this basis.¹¹

Responsiveness of Accenture's Proposal

In its final challenge to the reasonableness of the agency's evaluation of the awardee's proposed price, IBM asserts that Accenture's proposal failed to include all of the information required by the solicitation for its subcontractors, "yet the Agency took no action." Comments and First Supp. Protest at 37. The solicitation required proposals to include a list of "proposed probable subcontractors" showing: the supplier, a description of the effort, the type of contract, the percentage of workload and tasks to be performed, and "determination of fair and reasonable price." FOPR at 77. This information was to be included in the offeror's price volume, which was proposal volume III and the Price Model.¹² *Id.* at 75. Under no circumstances was this information and documentation to be included elsewhere in the proposal. *Id.*

¹⁰ The record reflects that the awardee's prices for CLINs x002 and x006 were approximately \$[DELETED] and \$[DELETED] respectively, for a combined total price of approximately \$[DELETED].

¹¹ To the extent the protester also challenges the agency's price realism evaluation because the Air Force unreasonably compared the offerors' prices as part of the price realism assessment, we find the argument to be without merit. The Air Force found Accenture's proposed price realistic prior to observing that IBM proposed a higher price than Accenture. See AR, Tab 17, Accenture Final Price Worksheet at 3. Thus, the record does not support the protester's contention that the comparison of prices contributed to the agency's realism determination. More important, as outlined above, the record establishes that the agency utilized a comparison of proposed prices to the IGE for the purpose of evaluating price realism.

¹² See *id.* at 79 ("Submit an electronically encoded Price Model to support your proposed pricing. For each performance period, the Price Model should include number of personnel (by labor category/functional area and tier level, if applicable) multiplied by the proposed labor rates, along with any other information deemed pertinent by the contractor such as material, direct/indirect rates, and any other rates utilized.")

Accenture's proposal identified two subcontractors, and the proposal identified the effort that each would perform. See AR, Tab 15, Accenture Changed Proposal Pages at 51. Accenture provided this information as a revision to its volume III price proposal. See *id.* (noting that that the page revised "Volume III Factor 2: Cost/Price" under section 11.0, Subcontractors).

IBM's proposal identified four subcontractors; the contract type for each subcontract was time and materials. AR, Tab 18, IBM Subfactor 1 Proposal at 165. IBM's proposal did not describe the specific effort assigned to each subcontractor, nor did the proposal identify the specific tasks that would be performed by each subcontractor. See *id.* at 169. Instead, the proposal indicated that three of the four subcontractors "bid all thirty three labor categories," and the fourth subcontractor bid thirty labor categories. *Id.* IBM's proposal included a general statement as to how the protester determined subcontractors' prices to be fair and reasonable, without reference to the specific contract at issue here. See *id.* Contrary to proposal instructions, all of that information was included in IBM's proposal volume II--Factor 1, Technical Proposal--and not volume III--Price.

Because IBM included the required information in the wrong proposal volume, its proposal was altogether out of conformance with the solicitation requirement at issue. Accenture's proposal volume III included at least some of the required subcontractor information. It is also unclear that the protester's proposal narrative provided any more information than did Accenture's. IBM's proposal failed to identify the specific portion of contract performance for which each contractor would be responsible, which was central to meeting the solicitation's information requirement. See FOPR at 77 (requiring, among other information, that the offeror identify the description of the effort, and the percentage of workload and tasks to be performed, for each subcontractor). Under the circumstances here, we do not see how IBM was prejudiced by the agency's failure to enforce offeror compliance with the FOPR requirements pertaining to the submission of subcontractor information. This allegation is denied.

Misleading Discussions

As relevant to the issues raised, the agency prepared its IGE on May 16, 2022. See AR, Tab 37, IGE (dated May 16, 2022). (The Air Force produced that document on March 27, 2023, as part of the agency's supplemental document production.) As discussed above, on October 3, 2022, after the preparation of the IGE, the Air Force issued amendment 1, which changed a key fixed-price CLIN to a cost-reimbursable one. See AR, Tab 7, FOPR amend. 2.

The protester argues for the first time in its third supplemental protest, filed April 24, 2023, that the agency's price discussions with IBM were misleading because they were based on an IGE that had not been revised to account for the changes made by amendment 1. Comments and Third Supp. Protest at 5. IBM contends that it was not until the Air Force's supplemental agency report, filed April 14, that "the Agency revealed for the first time that the IGE was flawed and out of date." *Id.* at 6. Specifically, IBM argues

that it was not until the supplemental MOL at that agency admitted that the changes to the procurement were significant. *Id.* at 6.

Accenture requests dismissal of the allegation as untimely, arguing that IBM knew all the facts forming the basis of the protest more than 10 days prior to filing the third supplemental protest. Intervenor's Request for Dismissal at 1, *citing People, Tech. & Processes, LLC*, B-417208, Mar. 21, 2019, 2019 CPD ¶ 113 at 11 (noting that a protest based upon other than alleged improprieties in a solicitation must be filed not later than 10 calendar days after the protester knew, or should have known, of the basis for the protest, whichever is earlier); 4 C.F.R. § 21.2(a)(2). Specifically, the awardee asserts that the protester knew on March 27, when the agency filed supplemental documents, that the IGE was prepared on May 16, 2022, and that the protester also knew in October 2022 that the Air Force had amended the solicitation to change CLIN x004 from fixed-price to cost-reimbursable--the action that the protester argues rendered the IGE outdated. Intervenor's Request for Dismissal at 2-3. Thus, the awardee contends, the protester knew no later than March 27 that the Air Force had relied on an IGE that was prepared approximately five months prior to the solicitation amendment. *Id.* at 3.

The protester argues that its protest was timely filed within 10 days of receipt of the agency report on April 14, because it was not until then that the protester knew "that the Agency expected offerors to price **all** additional effort identified during baselining under CLIN x004." Response to Dismissal Request at 5. The crux of the protester's challenge, however, is that the Air Force developed the IGE prior to amending the solicitation to change the way that offerors could price contract performance, and the Air Force did not subsequently revise the IGE. IBM was on notice of those facts at the time of the supplemental document production on March 27, 2023. The protester waited until April 24 to assert that the use of the unrevised IGE in the conduct of discussions was misleading. That allegation, filed more than 10 days after the receipt of the agency report documents establishing that the agency used an unrevised IGE in its conduct of price INs, is dismissed as untimely. 4 C.F.R. § 21.2(a)(2); *Graham Servs., LLC*, B-419588, B-419588.2, May 12, 2021, 2021 CPD ¶ 204 at 7 (finding untimely supplemental protest grounds filed more than 10 days after the production of the documents on which the allegations were based).¹³

RECOMMENDATION

In this protest, we sustain the allegation that the agency's price realism evaluation was flawed; the agency under-estimated how much lower Accenture's proposed prices for CLINs x002 and x006 were than the IGE, because the Air Force failed to account for the fact that Accenture's proposed prices for those two CLINs also included the requirement under CLIN x008. We therefore recommend that the agency reevaluate the realism of

¹³ IBM also asserts several challenges to the reasonableness of the Air Force's best-value tradeoff analysis. Given that we are sustaining the protest based on the agency's failure to reasonably perform a price realism evaluation and our recommendation to reevaluate and reconsider the award decision as appropriate, we need not address the remaining challenges to the agency's tradeoff decision.

Accenture's proposed prices consistent with this decision and make a new selection decision as appropriate.

We also recommend that IBM be reimbursed its reasonable costs of filing and pursuing its protest, including attorneys' fees. 4 C.F.R. § 21.8(d)(1). The protester's certified claim for costs, detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision. *Id.*

The protest is sustained in part and denied in part.

Edda Emmanuelli Perez
General Counsel