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Decision

Matter of: Amentum Services, Inc.

File: B-421603; B-421603.2; B-421603.3

Date: July 17, 2023

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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 agency's evaluation of offerors' past performance is denied where the evaluation was reasonable and consistent with the solicitation's evaluation criteria.
 2. Protest challenging cost realism analysis is denied where agency analyzed all major cost elements and relied on recommendations by the Defense Contract Audit Agency to reasonably determine whether proposed costs were realistic for the work to be performed.
 3. Protest alleging misleading discussions is denied where, notwithstanding apparent errors, the protester failed to demonstrate competitive prejudice.
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DECISION

Amentum Services, Inc., of Chantilly, Virginia, protests the issuance of a task order to Vertex Aerospace LLC, of Madison, Missouri, under fair opportunity submission request (FOSR) No. N6893622FOSRNTWP, issued by the Department of the Navy, Naval Test Wing Pacific (NTWP), for aircraft maintenance, modification, and logistics support services at Naval Air Station Point Mugu, California and Naval Air Weapons Station China Lake, California. The protester challenges various aspects of the agency's evaluation of proposals and source selection decision.

We deny the protest.

BACKGROUND

On August 26, 2022, the Navy issued the FOSR to firms holding contracts under the Naval Air Systems Command Contracted Maintenance, Modification, Aircrew, and Related Services multiple-award indefinite-delivery, indefinite-quantity (IDIQ) contract, pursuant to the procedures of Federal Acquisition Regulation (FAR) subpart 16.5. Agency Report (AR), Exh. 1c, FOSR at 1; Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 4.¹ The FOSR contemplated the issuance of a task order, with cost-reimbursable, cost-plus-fixed-fee, and other direct cost line items, for aircraft maintenance, modification, and logistics services in support of the Naval Air Warfare Center Weapons Divisions test and evaluation programs at Naval Air Station Point Mugu, California and Naval Air Weapons Station China Lake, California. FOSR at 4.

The FOSR provided for the issuance of the task order on a best-value tradeoff basis, considering program execution, past performance, and cost.² *Id.* at 47. The solicitation explained that the non-cost factors, when combined, were significantly more important than cost, but did not clarify the relative importance of each individual factor. *Id.*

Under the program execution factor, the FOSR instructed the agency to evaluate each offeror's proposed staffing approach, management approach, task order executability, and any proposed corporate restructure. *Id.* at 48. The FOSR specified that the agency would perform its evaluation by documenting findings that an aspect of a proposal either increased or decreased the agency's confidence that the offeror would successfully perform the required effort. *Id.* at 48, 52. The FOSR provided that the agency would assign each proposal an overall confidence assessment rating under the factor of either substantial confidence, satisfactory confidence, limited confidence, or no confidence. *Id.*

The FOSR instructed offerors to, as part of their staffing approach, propose fifteen enumerated key personnel. *Id.* at 21. Proposals were required to include resumes showing that the proposed key personnel met all of the FOSR's experience requirements. *Id.* As relevant here, the FOSR required offerors to propose two

¹ The agency amended the FOSR three times. Unless otherwise noted, citations to the FOSR in this decision are to the third and final amended version of the FOSR.

² The FOSR also provided for the evaluation of proposals under three factors on an acceptable/unacceptable basis that were not otherwise considered in the best-value tradeoff: task order administration, contract experience, and small business participation. FOSR at 47. If an offeror was evaluated as unacceptable under any of these three factors, it would not be eligible for award. *Id.*

ordnance managers as key personnel. *Id.* at 21-22. The FOSR identified four experience requirements for the ordnance manager position:

Possess an extensive background in the field of Aviation Ordnance with a minimum of 20 years of experience with 10 years of the last 20 years in direct aircraft loading, maintenance, and weapons system testing.

Of the 20 years of experience in Aviation Ordnance, 10 years shall be in a Limited Duty Officer/Chief Warrant Officer/Master Chief Petty Officer/Master Gunnery Sergeant position or in a civilian or contractor equivalent ordnance supervisory position that included responsibility for weapons systems reliability, Ordnance Certification program adherence, weapons logistics, ammunition accountability through the Non-Combat Expenditure Allocation Program, and assigning workloads as well as duties for entire shifts.

Must have experience supervising daily flight operations as well as personnel supporting scheduled and unscheduled maintenance.

Minimum ten years management/supervisory experience in a Navy/[Marine Corps] Aviation Organizational level maintenance activity.

AR, Exh. 1a, FOSR amend. 01, attach. 8, Minimum Personnel Qualifications, sheets MPQ-VX-30, MPQ-VX-31.

The agency was to evaluate proposals under the past performance factor by considering recent and relevant past performance information to determine the likelihood that the offeror would successfully perform the contract. FOSR at 48-50, 53. The solicitation provided that the agency would assign each offeror an overall past performance confidence assessment rating based on the relevance and quality of its recent past performance.³ *Id.* The FOSR defined recent past performance as work performed within five years of the solicitation's date of issuance. *Id.* at 49. The solicitation instructed the agency to evaluate relevancy by considering defined aspects of scope, complexity, and magnitude.⁴ *Id.* at 49. The FOSR specified that more

³ The FOSR provided that the agency would assign each offeror a performance confidence assessment rating of either substantial, satisfactory, neutral, limited, or no confidence. FOSR at 53.

⁴ For scope, the solicitation instructed the agency to consider the extent the past performance involved aircraft maintenance and maintenance support. FOSR at 49. For complexity, the agency would consider whether the past performance demonstrated simultaneous operations at multiple sites more than 50 miles apart, management of Service Contract Act employees at multiple sites with different collective bargaining agreements, or simultaneous support of multiple customers under a single contract. *Id.* For magnitude, the agency was to consider the extent to which the labor hours provided

relevant past performance would have more of an impact on the performance confidence assessment rating than past performance of lesser relevance. *Id.* at 48. The solicitation provided that the agency would focus its evaluation of the quality of past performance on six enumerated areas, including, as relevant here, meeting technical requirements and demonstrated systematic improvement actions taken to resolve past problems.⁵ *Id.* at 49.

With regard to cost, the agency was to perform a cost realism analysis to determine the most probable cost for each offeror's proposed approach. *Id.* at 50. The FOSR explained that the most probable cost would be calculated by adding an offeror's total proposed cost, including fee, "and any additional adjustments the [g]overnment has determined necessary to make the proposed cost realistic for all periods." *Id.* The solicitation provided that the agency could consider pertinent cost information outside the information provided in the proposals, as appropriate, to make the most probable cost determination. *Id.* The FOSR specified that the agency would consider Defense Contract Audit Agency (DCAA) recommended rates for both direct and indirect labor costs. *Id.*

As relevant here, the FOSR instructed offerors to provide supporting documentation for their proposed indirect rates as part of their cost proposals. *Id.* at 37. Supporting documentation was to include the offeror's "indirect rates in effect at the time of the FOSR release date" in the form of an approved forward pricing rate agreement (FPRA), historical rates, or DCAA billing/final rates. *Id.* If an offeror proposed indirect rates that differed from its FPRA or historical rates, the offeror had to provide a "fully supportable rationale" for the difference.⁶ *Id.* The FOSR advised that "[a]ny proposed indirect rate that is not fully supported by an FPRA, historical rates, or a methodology that clearly provides a supportable rationale for a variance from" historical rates is subject to adjustment during the cost realism evaluation. *Id.* Further, the FOSR explained that the agency would utilize "all available data from" DCAA and the Defense Contract Management Agency (DMCA) in its evaluation of proposed indirect rates, including forward pricing rate recommendations (FPRR). *Id.* Further, the FOSR specified that,

under the past performance effort were similar to the expected effort of 700,000 labor hours per year for this requirement. *Id.*

⁵ The six areas the agency was to consider in its evaluation of past performance quality were:

- 1) meeting technical requirements, i.e., the quality of technical performance;
- 2) meeting schedule requirements, e.g., on time or late delivery;
- 3) controlling contract cost;
- 4) managing the contracted effort;
- 5) regulatory compliance, and
- 6) the demonstrated systemic improvement actions taken to resolve past problems.

FOSR at 49.

⁶ The solicitation explicitly cautioned offerors that the agency could ask DCAA to review any such proposed indirect rates. FOSR at 37.

for the purposes of the cost realism evaluation, approved forward pricing rates would take precedence over historical rate information and the Navy would use DCAA-recommended rates, among other pertinent cost information, to arrive at the most probable cost. *Id.* at 37, 50.

On or before the October 19, 2022 solicitation closing date, the agency received proposals from two offerors, Amentum and Vertex. COS/MOL at 11. Following the initial evaluation of proposals, the agency entered into discussions with both offerors and allowed the offerors to submit proposal revisions. The agency evaluated Amentum’s and Vertex’s final proposals as follows:

	Amentum	Vertex
Task Order Administration	Acceptable	Acceptable
Contract Experience	Acceptable	Acceptable
Small Business Utilization	Acceptable	Acceptable
Program Execution	Satisfactory Confidence	Substantial Confidence
Past Performance	Limited Confidence	Satisfactory Confidence
Total Evaluated Cost	\$493,295,493	\$441,560,641

AR, Exh. 5, Source Selection Decision Document (SSDD) at 3.

As relevant here, under the program execution factor, the agency evaluators identified two aspects of Vertex’s proposal that significantly increased confidence in Vertex’s ability to perform the contract’s requirements. Specifically, Vertex proposed [DELETED] positions above the minimum requirements,⁷ which the agency found would “serve to better coordinate the complex mission execution at NTWP squadrons,” and Vertex also provided a thorough approach in response to the FOSR’s quality escape scenario.⁸ AR, Exh. 4, ref. e, Program Execution Summary Report at 58-59. In addition, the Navy found that Vertex’s proposed approach to third-party quality management moderately increased the agency’s confidence in Vertex’s ability to perform the contract’s requirements. *Id.* at 60. The agency did not identify any aspects of Vertex’s program execution proposal that decreased the agency’s confidence in Vertex’s ability to perform the contract requirements. *Id.*

⁷ Vertex’s proposed positions identified by the agency were a [DELETED] and a dedicated [DELETED] for the F/A-18 aircraft at the China Lake site. AR, Exh. 4, ref. e, Program Execution Summary Report at 58-59.

⁸ The solicitation’s quality escape scenario described a series of issues that could arise with a contractor-maintained aircraft and provided a set of contractor actions that had contributed to the “mishap.” FOSR at 23. Offerors were instructed to respond with a narrative “identifying the root causes of non-conformities, actions the contractor will make to correct the non-conformities, and a fully developed plan of implementation.” *Id.*

The agency similarly identified that Amentum proposed [DELETED] additional positions above the minimum personnel requirements, but found that this only slightly increased the agency's confidence in Amentum's successful performance because the proposed positions were all [DELETED] roles that only benefited a "limited focus area." *Id.* at 27. Similar to its conclusion with regard to Vertex's proposal, the agency found that Amentum's proposed approach to third-party quality management moderately increased its confidence in Amentum's ability to perform the contract requirements. *Id.* at 27-28. The agency evaluators also identified that two of Amentum's proposed key personnel had failed to meet one of the FOSR's experience requirements for their positions and found that this "moderately decreased" the Navy's confidence in Amentum's ability to perform the contract requirements. *Id.* at 28-29.

The source selection authority (SSA) conducted an independent assessment and agreed with the evaluation team's ratings and findings. AR, Exh. 5, SSDD at 3. As relevant here, the SSA compared the similar confidence-increasing aspects of Amentum and Vertex's proposals under the program execution factor. The SSA stated that, despite different implementation timelines, the offerors' approaches to third-party quality management similarly increased the Navy's confidence in successful performance. *Id.* at 4. The SSA also considered the different additional personnel proposed by each offeror and reiterated that Vertex's proposal was more advantageous than Amentum's in this regard. *Id.* at 4-5. In addition, the SSA recognized that Vertex's proposal contained a unique advantage due to its response to the FOSR's quality escape scenario and that Amentum received the only negative finding based on its key personnel experience. *Id.* at 5. Accordingly, the SSA concluded that Vertex's proposal was superior under the program execution factor. *Id.* at 6.

The SSA also documented Vertex's evaluated superiority under the past performance factor and lower evaluated cost. *Id.* at 5-6. Based on the above considerations, and consistent with the relative importance of the evaluation factors under the FOSR, the SSA concluded that Vertex's lower-cost and higher technically rated proposal represented the best value to the government. *Id.* at 7.

The SSA separately considered the fact that Amentum had proposed a lower cost and had only been evaluated at a higher most probable cost due to upward adjustments from the agency's price realism analysis. *Id.* The SSA concluded, however, that "even if Amentum's proposed costs remained as originally proposed, absent the [g]overnment[s] [most probable cost] adjustment, the benefits provided in Vertex's higher rated" proposal would nonetheless have warranted Vertex's higher proposed cost. *Id.* at 7.

The agency subsequently notified Amentum of the award to Vertex and provided Amentum with a debriefing. COS/MOL at 11. On April 10, 2023, Amentum filed this protest with our Office.⁹

DISCUSSION

Amentum challenges various aspects of the agency's evaluation of proposals under the program execution, past performance, and cost factors, and maintains that the source selection decision was unreasonable. For the reasons that follow, we find no basis to sustain the protest.¹⁰

Past Performance

Amentum challenges several aspects of the agency's evaluation of proposals under the past performance factor, primarily its evaluation of relevance and its assessment of a limited confidence rating to Amentum's past performance. We have reviewed the evaluation record and find that none of the arguments provide a basis to sustain the protest.

The protester initially contends that the Navy unreasonably failed to evaluate any of Amentum's past performance, other than its performance on the incumbent contract, as very relevant. Protest at 18-19; Comments at 8. As noted above, the solicitation stated that the agency would evaluate the relevancy of past performance by considering its scope, complexity, and magnitude. FOSR at 49. As relevant here, the FOSR required the agency to evaluate complexity by considering whether the past performance demonstrated simultaneous operations at multiple sites separated by more than 50 miles, management of Service Contract Act employees at multiple sites with different collective bargaining agreements, or simultaneous support of multiple customers under a single contract. *Id.*

The protester argues that the agency should have evaluated Amentum's work on a contract for the Naval Test Wing Atlantic (NTWL) program as very relevant because it was similar in scope, complexity, and magnitude to the current requirement. Protest at 18-19. Amentum states that the Navy's improper relevancy determination resulted in the discounting of Amentum's high quality ratings on the NTWL contract in the agency's overall confidence assessment. Comments at 8.

⁹ The task order at issue is valued in excess of \$25 million, and was placed under an IDIQ contract established by the Navy. Accordingly, our Office has jurisdiction to consider Amentum's protest. 10 U.S.C. § 3406(f)(1)(b).

¹⁰ Amentum raises other collateral issues. While our decision does not address every issue, we have considered the arguments and find that none provides a basis to sustain the protest.

The agency responds that its evaluation of relevance was reasonable and consistent with the solicitation's evaluation criteria. COS/MOL at 19. In this regard, the agency explains that Amentum's NTWL contract did not involve either simultaneous operations at multiple sites separated by more than 50 miles or the management of employees under two different collective bargaining agreements. *Id.* The contract therefore did not meet the FOSR's criterion for being very relevant since it did not involve "essentially the same" complexity as the current requirement. *Id.*

In task order competitions conducted pursuant to FAR subpart 16.5, our Office will examine an agency's evaluation of an offeror's past performance only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations, since determining the relative merit of an offeror's past performance is primarily a matter within the agency's discretion. *Engility Corp.*, B-413120.3 *et al.*, Feb. 14, 2017, 2017 CPD ¶ 70 at 10; *TeleCommunication Sys., Inc.*, B-413265, B-413265.2, Sept. 21, 2016, 2016 CPD ¶ 266 at 7. The evaluation of past performance, by its very nature, is subjective, and we will not substitute our judgment for reasonably based evaluation ratings; an offeror's disagreement with an agency's evaluation judgments, by itself, does not demonstrate that those judgments are unreasonable. *Engility Corp.*, *supra* at 10; *Cape Envtl. Mgmt., Inc.*, B-412046.4, B-412046.5, May 9, 2016, 2016 CPD ¶ 128 at 8-9.

Here, the record demonstrates that the agency considered the complexity of Amentum's NTWL performance effort and found that while it did involve simultaneous operations at more than one site, the sites were less than 50 miles apart. AR, Exh. 4, ref. f, Past Performance Summary Report at 3. The agency also found that the past performance did not involve the management of Service Contract Act employees at multiple sites with different collective bargaining agreements.¹¹ *Id.*

The agency explains that its consideration of these aspects was reasonable because the current effort involves managing employees under two different collective bargaining agreements in two very different areas, one with a high cost of living and one in a remote region. COS/MOL at 21. The agency argues that Amentum's NTWL contract did not present the same staffing challenges because it involved operations at a single site that bordered "a major metropolitan area with a large pool of qualified workers."¹² *Id.*

¹¹ Notably, the agency similarly assigned a rating of relevant to a Vertex past performance reference that was also a NTWL program contract that did not involve either simultaneous operations at more than one site at least 50 miles apart or the management of Service Contract Act employees at multiple sites with different collective bargaining agreements. AR, Exh. 4, ref. f, Past Performance Summary Report at 25.

¹² The protester disagrees with the agency's conclusion that Amentum's NTWL contract did not involve simultaneous operations at more than one site because performance under this contract involved detachments that were located away from the main performance site. Protest at 18. In addition, the protester argues, without explanation,

On this record, we find no basis to conclude that the agency's evaluation of relevance was unreasonable. While the FOSR did not specify that past performance would not be considered very relevant if only one or two aspects of scope, complexity, or magnitude were dissimilar from the current effort, the solicitation did clearly provide that it would consider how similar in scope, complexity, or magnitude the past performance was to the FOSR's requirements. FOSR at 49. We find nothing unreasonable in the agency's consideration of these aspects in its relevancy determination and note that the agency's very relevant standard was consistently applied across all offerors.¹³ Ultimately, we conclude that the protester's objections here amount to nothing more than disagreement with the agency's reasoned judgement and discretion.

Amentum separately contends that the agency unreasonably evaluated the quality of performance on Amentum's incumbent contract and undervalued the firm's successful performance on its other past performance efforts because the agency did not consider those efforts to be very relevant. Protest at 14-19; Comments at 6-9. The protester alleges that the agency unreasonably focused on negative ratings and narrative information found in contractor performance assessment reports (CPARs) for the incumbent contract. See Comments at 6-7. Rather, Amentum argues, the Navy should have given more weight to the CPAR assessing official's overall recommendations and information proffered by Amentum showing improvements made in response to performance issues. *Id.*

The agency responds that its past performance evaluation was reasonable and consistent with the solicitation's evaluation scheme. COS/MOL at 21-24. In this regard, the agency contends that it reasonably relied on documented performance problems and marginal quality ratings for the incumbent contract. *Id.* Further, the agency argues that it properly considered information submitted by Amentum purporting to show the implementation of systematic improvements on the incumbent contract, but found this information did not mitigate Amentum's documented performance issues. *Id.* at 23.

that the agency "exaggerates the fact that the NTWL features one [collective bargaining agreement]." Comments at 8. The agency responds that it did not consider detachments as equal to the operation of a second site because they are not a permanent "home base" of operations and they "often last for only a few weeks." COS/MOL at 20. We find this explanation to be reasonable and note that the evaluation record demonstrates that the agency evaluated all offerors equally regarding what it considered "essentially the same scope, magnitude of effort, and complexities the FOSR requires." AR, Exh. 4, ref. f, Past Performance Summary Report at 2.

¹³ For example, the agency found Vertex's past performance reference P-V-01 to be only relevant despite the reference meeting all of the stated criteria for complexity and magnitude while containing "most" of the elements of contract scope enumerated in the FOSR. AR, Exh. 4, ref. f, Past Performance Summary Report at 23.

The record demonstrates that the agency evaluated five contracts submitted by Amentum in its past performance proposal. AR, Exh. 4, ref. f, Past Performance Summary Report at 3-5. As noted above, the agency found that the incumbent contract was very relevant and the other four submitted contracts were relevant. *Id.* The agency reviewed 21 CPARs and two past performance questionnaires related to these contracts. *Id.* at 6.

For the evaluation of quality, the agency found that while the four relevant contracts demonstrated satisfactory or better performance quality, the incumbent contract “demonstrated ongoing quality problems, which remain unresolved.” *Id.* The agency evaluators noted that the two most recent CPARs--covering 2019 through 2021--rated Amentum’s performance quality as marginal and documented dozens of corrective action requests issued by the agency over those two years. *Id.* at 8. The evaluators further noted that the CPARs indicated that the contractor’s approach to resolving corrective action reports was not timely or thorough and resulted in the consistent need for agency involvement and oversight. *Id.*

The agency also reviewed a past performance questionnaire for the incumbent contract, covering 2022, which stated that Amentum’s marginal quality of performance continued through October of 2022. *Id.* The record shows that the agency also considered the protester’s claims that it implemented systematic improvements on the incumbent contract. Ultimately, however, the Navy did not find that any of the information provided overrode the agency’s concerns based on multiple years of performance issues encountered by Amentum.¹⁴ *Id.* at 20-22.

The agency found the identified negative issues in the incumbent contract “highly compelling” despite Amentum’s positive performance on four of five past performance references. *Id.* at 21. The agency explained that the negative performance history “is of particular concern as it is indicative of Amentum’s lack of ability to safely and effectively perform the proposed work.” *Id.* The agency concluded that the “repeated documented quality deficiencies as the incumbent significantly reduces the Government’s confidence” that Amentum could overcome its quality issues without extensive government oversight. Accordingly, the Navy assigned Amentum’s past performance a rating of low confidence. *Id.*

¹⁴ For example, the agency notified the protester during discussions that the agency’s technical point of contact had rebutted Amentum’s claims of systematic improvement during Amentum’s performance of the foreign object debris (FOD) program. *Id.* The agency considered Amentum’s discussion response, which asserted that the firm had incorporated more corrections in November of 2022, resulting in the FOD program passing inspection in December. *Id.* However, the agency ultimately found that the passing of a single inspection after three years of documented performance issues was not a reasonable basis to conclude there had been systematic improvement.

On this record, we see no basis to conclude that the agency's assessment was unreasonable. In this regard, the agency's findings were based on negative past performance information in specified areas that the FOSR required the agency to consider: meeting technical requirements and demonstrating systematic improvement actions taken to resolve past problems.¹⁵ The agency further explained why these issues were so significant, namely, that they were ongoing and seemingly uncorrected across multiple years of performance, which called into question the contractor's ability to meet the contract requirements.

In light of our conclusion above that the agency reasonably evaluated relevancy, and consistent with the solicitation's preference for more relevant past performance,¹⁶ we see no basis to conclude that the agency was unreasonable to place significant weight on Amentum's poor performance as the prime contractor on the incumbent contract.¹⁷ Accordingly, we deny this protest ground.

Cost

Amentum raises a variety of challenges to the agency's evaluation of cost. Protest at 19-25; Comments at 10-15; Second Supp. Protest at 8-13; Supp. Comments at 6-8. We have reviewed the protester's arguments and the cost evaluation record and find that none provide a basis to sustain the protest. As discussed below in a few

¹⁵ The protester separately argues that the agency disparately evaluated past performance where it accepted Vertex's description of systematic improvements without long term data to support it but failed to do so for Amentum. Second Supp. Protest at 5-8; Supp. Comments at 4-6. However, the record shows that, similar to its treatment of Amentum's past performance, the agency considered Vertex's description of efforts to resolve performance issues but found that they did not change the underlying CPARS ratings or the Navy's ultimate confidence assessment. AR, Exh. 4, ref. f, Past Performance Summary Report at 37-38.

¹⁶ The FOSR stated that "[m]ore relevant past performance will typically be a stronger predictor of future success and have more influence on the Performance Confidence Assessment Rating than past performance of lesser relevance." FOSR at 48-49.

¹⁷ We are also unpersuaded by the protester's argument that the agency should have given more weight to the recommendation of the incumbent contract CPAR assessing official, that they would consider Amentum for similar requirements in the future as a reasonable indicator of successful performance. See Protest at 15-16. As noted above, the FOSR required the agency to focus its evaluation of past performance quality on six specific areas, one of which was "meeting technical requirements, *i.e.*, the quality of technical performance." FOSR at 49. Further, the protester does not point to any evaluation criteria requiring that the agency place any particular value on the CPAR assessing official's overall recommendation. Accordingly, we find it to be unobjectionable that the Navy's evaluation relied more heavily on specific CPARs information discussing Amentum's documented failures to meet technical requirements rather than the assessing official's overall recommendation.

representative examples, we find that the agency's cost realism evaluation and most probable cost adjustments were reasonable and in accordance with the terms of the solicitation.

Where an agency intends to issue a task order containing cost-reimbursable contract line items, an offeror's estimated costs of performing the task order are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. *Apprio, Inc.*, B-420627, June 30, 2022, 2022 CPD ¶ 170 at 5-6. Consequently, the procuring agency must perform a cost realism analysis to determine the extent to which an offeror's proposed costs are realistic for the work to be performed. FAR 16.505(b)(3); FAR 15.404-1(d); *Target Media Mid Atlantic, Inc.*, B-412468.6, Dec. 6, 2016, 2016 CPD ¶ 358 at 4 (applying FAR part 15 cost realism standards to a FAR part 16 task order procurement). An agency's realism analysis need not achieve scientific certainty; rather, the analysis must provide a reasonable measure of confidence that the costs proposed are realistic based on information reasonably available to the agency at the time of its evaluation. *Smartronix, Inc.; ManTech Advanced Sys. Int'l, Inc.*, B-411970 *et al.*, Nov. 25, 2015, 2015 CPD ¶ 373 at 9. Our review of an agency's cost realism evaluation is limited to determining whether the cost analysis was reasonably based. *Id.*

Amentum first argues that the agency unreasonable adjusted its fringe rates in the most probable cost analysis. Specifically, Amentum contends that the agency's upward adjustment unreasonably relied on the rates in Amentum's forward pricing rate proposal (FPRP) instead of accepting Amentum's proposed blended fringe benefit rate. Protest at 19-23; Comments at 11-12. The protester explains that the FOSR allowed offerors to proposed blended indirect rates that differed from their historical or forward pricing rates as long as they were fully supported. *Id.* Amentum maintains that the agency's evaluation failed to properly consider Amentum's proposed supporting rationale. *Id.*

The agency responds that the upward adjustment of Amentum's fringe costs was reasonable and in accordance with the solicitation's evaluation scheme. COS/MOL at 25-27. In this regard, the agency argues it reasonably agreed with DCAA's conclusion that Amentum's proposed fringe rates significantly understated its likely fringe costs and that Amentum's recently audited forward pricing rate proposal was a more realistic estimator of the costs that would be incurred by the government. *Id.*

We find no reason to question the Navy and DCAA's reliance on Amentum's forward pricing rates here. The record demonstrates that Amentum proposed a fringe rate of [DELETED] percent based on a plan to combine two fringe pools: its [DELETED] fringe pool with its [DELETED] fringe pool. AR, Exh. 2, Amentum Cost Proposal at 6. In support of its proposal, Amentum provided three years of historical data for its [DELETED] fringe pools, which demonstrated that, for the prior three fiscal years, the

[DELETED] fringe pool had a much higher indirect fringe rate than the [DELETED] fringe pool.¹⁸ AR, Exh. 2, Amentum Cost Proposal attach., Fringe Supporting Data.

Here, the upward adjustment of Amentum's proposed fringe costs was due to DCAA recommendations based on Amentum's audited FPRP, which also demonstrated higher fringe rates for [DELETED] contracts such as this one.¹⁹ AR, Exh. 4, ref. g, Cost Summary Report at 12. On January 31, 2023, at the Navy's request, DCAA provided its recommendations regarding the costs proposed by Amentum for this procurement. AR, Exh. 17, DCAA Memorandum. DCAA considered the basis of Amentum's proposed new composite fringe rate, compared it to Amentum's recent [DELETED] fringe forward pricing rate, and concluded that Amentum's proposed fringe rate resulted in "significantly understated" proposed costs. *Id.* at 5-6. As noted above, for cost-type task orders, an offeror's estimated costs are not dispositive because the government is bound to pay the contractor its actual and allowable costs. *Apprio, Inc., supra*. We see no reason to object to DCAA's conclusion here where Amentum itself proposed the relevant NTWP fringe rate as a 5-year forward pricing rate just one month before submitting the instant proposal and Amentum has not otherwise explained how its proposed change in cost accounting would actually result in lower incurred fringe costs for its NTWP labor.

The protester maintains that the agency's analysis is unreasonable where it failed to document a more substantive assessment of the realism of Amentum's proposed composite fringe rate instead of focusing on Amentum's FPRP rates. Comments at 11. However, the solicitation advised that, for the purposes of the cost evaluation, forward pricing rates would take precedence over historical rate information and the agency would use DCAA-recommended rates, among other pertinent cost information, to determine the most probable cost. FOSR at 37, 50. While Amentum clearly disagrees with the agency's conclusions here, it has not meaningfully demonstrated that the agency's use of Amentum's forward pricing rate as the most realistic measure of probable fringe cost is unreasonable or inconsistent with the solicitation's evaluation criteria. In light of the above, we see no basis to object to the agency's decision to follow DCAA's recommendation to upwardly adjust Amentum's fringe costs in the most probable cost evaluation. See *ERC, Inc.*, B-404721, B-404721.2, April 19, 2011, 2011 CPD ¶ 94 at 7; (*citing Systems Research Corp.*, B-237008, Jan 25, 1990, 90-1 CPD

¹⁸ For example, in fiscal year 2022, Amentum's [DELETED] fringe rate was [DELETED] percent, while its [DELETED] fringe rate was [DELETED] percent. AR, Exh. 2, Amentum Cost Proposal attach., Fringe Supporting Data, Exh. "FY22". Amentum's [DELETED] fringe pool provided a significantly larger [DELETED] than its [DELETED] fringe pool.

¹⁹ Amentum's own September 23, 2022 FPRP proposed a fringe rate of [DELETED] percent through fiscal year 2027 for NTWP contracts. AR, Exh. 18, DCAA Audit Report, Appendix. On December 1, 2022, DCAA completed an audit of Amentum's FPRP and did not take exception to Amentum's proposed NTWP forward pricing fringe rate. AR, Exh. 18, DCAA Audit Report at 16.

¶ 106) (agency reasonably may rely on DCAA's rate checks in connection with a cost realism analysis).

Next, Amentum contends that the agency's evaluation of Vertex's cost proposal was unreasonable because it was based on a noncompliant cost proposal that failed to properly substantiate Vertex's proposed fringe rate. Second Supp. Protest at 8-9, 12-13; Supp. Comments at 6-7. In this regard, the protester alleges that the FOSR required offerors to substantiate their proposed indirect rates, including fringe, with either a FPRA that aligns to the proposed rate or three years of historical rates for the indirect rates proposed, which Vertex failed to do. *Id.* Amentum avers that there is no alternate approach in the FOSR for substantiating indirect rates. Supp. Comments at 7.

The agency responds that Amentum's argument is based on an erroneous interpretation of the solicitation and that the Navy's evaluation was reasonable and in accordance with the solicitation requirements. Supp. COS/MOL at 8-9. The agency argues that the FOSR specifically provided instructions for the proposal of indirect rates that were not supported by a FPRA or historical data. *Id.* The agency explains it reasonably evaluated Vertex's cost proposal, despite the absence of a forward pricing rate or historical data supporting the proposed fringe rate, because Vertex had no forward pricing rate or historical fringe rate data for the NTWP program workforce. *Id.*

Where a dispute exists as to a solicitation's actual requirements, we will first examine the plain language of the solicitation. *Bauer Techs., Inc.*, B-415717.2, B-415717.3, June 22, 2018, 2018 CPD ¶ 217 at 4. Where a protester and an agency disagree over the meaning of solicitation language, we will resolve the matter by assessing whether each posited interpretation is reasonable. *Anders Constr., Inc.*, B-414261, Apr. 11, 2017, 2017 CPD ¶ 121 at 3. To be reasonable, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. *Planned Sys. Int'l, Inc.*, B-413028.5, Feb. 21, 2018, 2018 CPD ¶ 126 at 6.

Here, we find reasonable the agency's view that Vertex met the FOSR's cost proposal submission requirements. The protester is correct that the solicitation plainly stated that offerors "shall provide the indirect rates in effect at the time of the FOSR release" with supporting documentation such as an FPRA or historical rate data. FOSR at 37. However, the FOSR specified that "[i]f any of the indirect rates proposed by the Offeror or any Other Entity differ from" FRPA or historical rate data, then the offeror was to provide a "fully supportable rationale . . . indicat[ing] how it computed and applied the indirect rates, including a full cost calculation breakdown." *Id.* Further, the FOSR later advised offerors that any "proposed indirect rate that is not fully supported by an FPRA, historical rates, or a methodology that clearly provides a supportable rationale . . . is subject to adjustment during cost realism analysis." *Id.* (emphasis added).

When reading the solicitation as a whole, it is clear that the FOSR contemplated that offerors might propose indirect rates that were not supported by a forward pricing rate or historical data. While the protester focuses on the explicit requirement for offerors to

submit their current indirect rates, Amentum unreasonably interprets this requirement as limiting how offerors can demonstrate the reasonableness of their proposed indirect rates. Because we conclude that the FOSR contains no such limitation, we must next consider the cost information provided by Vertex to determine if it adequately demonstrates the reasonableness of its proposed indirect rates.

Here, we find that the agency reasonably evaluated the realism of Vertex's proposed pricing. Vertex's proposal provided its current indirect rates through the submission of its DCMA FPRR. AR, Exh. 3, Vertex Final Cost Proposal at 9; AR, Exh. 3, Vertex Final Cost Proposal, Annex E-1, Vertex March 9, 2022 FPRR. While Vertex uses the FPRR to substantiate most of its proposed indirect rates, Vertex's proposal explains that "Vertex's FPRR does not include a fringe rate for the program workforce," therefore it justified its proposed fringe rate by individually pricing each cost element that will be allocable to its NTWP fringe indirect cost pool. AR, Exh. 3, Vertex Final Cost Proposal at 10-11.

The record demonstrates that the agency considered the specific fringe costs proposed by Vertex and made upward adjustments where it found the costs to be understated compared to DCMA's recommendations. AR, Exh. 4, ref. g, Cost Summary Report at 32. As an initial matter, the agency found that the fringe rate contained in Vertex's FPRR was derived from employees not associated with a collective bargaining agreement (unlike the instant requirement), and it was therefore appropriate not to use the FPRR fringe rate for this requirement.²⁰ *Id.* The agency evaluators then considered Vertex's specific fringe benefits proposed for professional employees and found that they were "comparable to the benefits of professional employees under the current contract," while providing some benefits not provided under the current contract. *Id.* at 40-41. The agency also found that, while the proposed fringe costs were "consistent with the approach described in the proposal," the below-incumbent contract fringe rate could negatively impact Vertex's ability to provide uninterrupted, high-quality work. *Id.* at 41. The Navy ultimately applied an upward adjustment to those fringe costs it found to be understated. *Id.* at 32.

In sum, we find that the agency clearly considered both the current indirect rates proposed by Vertex and the underlying elements of the rationale for those rates. Accordingly, we find no basis to conclude that Vertex's proposed indirect costs were not

²⁰ Notably, the general fringe rates included in Vertex's FPRR were lower than the fringe rates proposed by Vertex. *Compare* AR, Exh. 3, Vertex Final Cost Proposal at 9, *with* AR, Exh. 3, Vertex Final Cost Proposal, Annex E-1, Vertex March 9, 2022 FPRR at 1. Accordingly, had Vertex proposed a fringe rate in line with its forward pricing rates or historical fringe rates, as advocated for by the protester, it likely would have proposed a lower fringe rate than it ultimately did.

in accordance with the terms of the solicitation or that the agency's evaluation was unreasonable.²¹ As such, we deny this ground of protest.

Key Personnel

Amentum contends that the agency's discussions were misleading because the Navy did not make clear which experience requirements Amentum's proposed ordnance manager failed to meet. Protest at 13-14; Comments at 4-6. In this regard, the protester contends the agency negatively evaluated Amentum's proposed ordnance managers for failing to meet an experience requirement that the agency had not identified in discussions. Protest at 13-14. Amentum argues that, had the agency properly identified all of its concerns with the experience offered by Amentum's proposed ordnance managers, Amentum would have either clarified their qualifications or substituted other candidates. *Id.* at 14.

The agency responds that its conduct in discussions was fair and not misleading. The agency contends that the Navy's actions of directing offerors to the agency's area of concern were sufficient here since a task and delivery order competition conducted under FAR section 16.505 does not contain the same formal discussion requirements as a FAR part 15 procurement. COS/MOL at 14-15. In this regard, the agency argues that both Amentum and Vertex were issued interchange notices that documented which proposed key personnel were evaluated as having not met the FOSR's required qualifications. COS/MOL at 14.

Section 16.505 of the FAR does not establish specific requirements for discussions in competitions for task and delivery orders under IDIQ contracts. Nonetheless, when such exchanges with the agency occur, they must be fair and not misleading. *AT&T Corp.*, B-414886 *et al.*, Oct. 5, 2017, 2017 CPD ¶ 330 at 4. Our analysis regarding fairness will, in large part, reflect the standards applicable to negotiated procurements. *Skyline Ultd, Inc.*, B-416028, B-416028.2, May 22, 2018, 2018 CPD ¶ 192 at 6. In this regard, discussions, when conducted, must be meaningful; that is, they may not be misleading. *SMS Data Prods. Grp., Inc.*, B-414548 *et al.*, July 12, 2017, 2017 CPD ¶ 222 at 8. More specifically, an agency may not mislead an offeror through the framing of a discussion question into responding in a manner that does not address the

²¹ The protester maintains that the agency's evaluation of fringe costs was unreasonable where its upward adjustment of Amentum's most probable costs resulted in a more than 25 percent difference in the total evaluated fringe costs between the two offerors despite the "same fringe benefits" and similar proposed direct cost bases. Second Supp. Protest at 13. However, the protester does not meaningfully explain which elements of Vertex's proposed fringe cost are unrealistically low or otherwise demonstrate that Amentum will be able to significantly lower its own incurred fringe costs when compared to the incumbent contract. Without more, we see no basis to conclude that the agency's realism analysis was unreasonable simply because two offerors might pay different amounts to provide comparable--but not necessarily the same--fringe benefits under this contract.

agency's actual concerns, or otherwise misinform the offeror about a problem with its proposal. *Nexant, Inc.*, B-407708, B-407708.2, Jan. 30, 2013, 2013 CPD ¶ 59 at 3-4.

The FOSR instructed offerors to propose two ordnance managers as key personnel. FOSR at 21-22. As described in detail above, the FOSR required a proposed ordnance manager to meet four separate experience requirements including a requirement for certain aviation ordnance experience, a requirement for certain ordnance supervisory experience at specified ranks, a requirement for certain daily flight operations experience, and a requirement for certain naval aviation experience. See AR, Exh. 1a, FOSR amend. 01, attach. 8, Minimum Personnel Qualifications, sheets MPQ-VX-30, MPQ-VX-31.

After evaluating initial proposals, the Navy sent an interchange notice to Amentum that identified both of Amentum's proposed ordnance managers as not meeting the FOSR's experience requirements and requested that Amentum provide updated resumes or new candidates that met the requirements. AR, Exh. 12a, Amentum PE-001 at 3. Specifically, both proposed ordnance managers were evaluated as missing the requirements for aviation ordnance experience and naval aviation experience. *Id.* The interchange notice was silent as to the other ordnance manager experience requirements.²²

In response to the interchange notice, Amentum submitted a revised proposal that clarified the resume of one of its proposed ordnance managers and substituted a new candidate for the other ordnance manager position. AR, Exh. 13, Amentum Revised Key Personnel Resumes at 46-52. In its final evaluation, the agency found that both of Amentum's proposed ordnance manager candidates met the two requirements identified during discussions but did not meet the requirement for certain ordnance supervisory experience at specified ranks. AR, Exh. 4, ref. e, Program Execution Summary Report at 11-12. The agency evaluators concluded that "Amentum's inability to propose qualified personnel moderately decreases the Government's confidence in Amentum's ability to manage and perform ordnance operations in a safe, effective, and efficient manner." *Id.* at 29.

On this record, we find that the agency's discussions regarding the evaluated experience of Amentum's proposed ordnance managers were misleading.²³ To the

²² Notably, the agency identified one of Vertex's proposed ordnance managers as missing the same requirement for certain ordnance supervisory experience at specified ranks. AR, Exh. 12b, Vertex Interchange Notice at 2. Following, this interchange, Vertex clarified the relevant experience of its proposed ordnance manager through a revised resume. AR, Exh. 23, Vertex Interchange Response, Ordnance Manager VX-30.

²³ The protester separately challenges the agency's evaluation of the proposed ordnance manager's experience and alleges that the agency conducted discussions unequally with regard to the key personnel experience requirements. Protest at 11-13;

extent the agency's interchange notice pointed the protester to the agency's concerns with the proposed ordnance managers, it was limited to identifying two specific requirements that the proposed key personnel did not meet. We agree with the protester that the agency's explicit enumeration of two of the four experience requirements as missing conveyed that the other two relevant experience requirements had been met or, at a minimum, were not being strictly enforced.²⁴ Amentum was therefore improperly deprived of the opportunity to address the agency's compliance concerns.

Prejudice

Notwithstanding our conclusion above, our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was competitively prejudiced by the agency's actions. *Smartronix, Inc.; ManTech Advanced Sys. Int'l, Inc.*, B-411970.9 *et al.*, Dec. 9, 2016, 2016 CPD ¶ 362 at 10. Where a protester fails to demonstrate that, but for the agency's actions, it would have a substantial chance of receiving award, there is no basis for finding prejudice, and our Office will not sustain the protest, even if deficiencies in the procurement are found. *Id.*; see *YWCA of Greater Los Angeles*, B-414596.7, B-414596.8, Mar. 11, 2019, 2019 CPD ¶ 104 at 10 (denying the protest where even if the agency engaged in misleading discussions, the protester could not demonstrate it was prejudiced by the agency's actions).

Comments at 2-4; Second Supp. Protest at 1-5; Supp. Comments at 2-3. Given our conclusion below that the agency's misleading discussions resulted in the agency improperly assessing Amentum a decreases confidence finding related to Amentum's proposed ordnance managers, our decision need not resolve these separately raised protest grounds.

²⁴ The agency argues that, despite the language of the interchange notice, Amentum was aware that the proposed ordnance manager that remained in its final proposal did not meet the requirement for certain ordnance supervisory experience at specified ranks. COS/MOL at 15. In this regard, after the submission of initial proposals, Amentum separately requested a waiver for this ordnance manager to be approved as a substitute key person in the same position on the incumbent contract. *Id.* The agency notes that Amentum's waiver request specifically explained that this proposed ordnance manager did not meet the contract's requirement for certain ordnance supervisory experience at specified ranks. *Id.*; AR, Exh. 14, Key Person Waiver at 2.

However, the agency also notes that it apparently granted Amentum's waiver request. COS/MOL at 15 ("[the proposed ordnance manager] is currently serving in that position under the predecessor contract"). In our view, the fact that the agency granted the protester's waiver request and later did not list the relevant missing requirement in Amentum's interchange notice only bolsters the protester's argument that the agency did not properly convey its ultimate concerns regarding the relevant experience requirement.

Here, setting aside the negative finding based on the misleading discussions, the agency identified two aspects of Amentum's proposal and three aspects of Vertex's proposal that increased confidence in successful performance under the program execution factor. AR, Exh. 5, SSDD at 4-5. As discussed above, for each of the advantageous aspects identified in Amentum's program execution proposal, the agency identified a similar aspect of Vertex's proposal that it considered equally, or more, advantageous. *Id.* The agency also found that only Vertex's proposal had provided a thorough approach in response to the FOSR's quality escape scenario that significantly increased the agency's confidence in Vertex. *Id.* at 5; AR, Exh. 4, ref. e, Program Execution Summary Report at 58-59.

On this record, we see no basis to find that the protester was prejudiced by the agency's errors. There is no legal requirement that an agency must award the highest possible rating under an evaluation factor simply because the agency evaluates aspects of the proposal positively or does not evaluate any aspects of the proposal negatively. See *NCI Info. Sys., Inc.*, B-417752 *et al.*, Oct. 17, 2019, 2019 CPD ¶ 363 at 6 (*citing Applied Tech. Sys., Inc.*, B-404267, B-404267.2, Jan. 25, 2011, 2011 CPD ¶ 36 at 9). Amentum contends that, had the agency not conducted misleading discussions, Amentum's proposal would have received a substantial confidence rating under the program execution factor, but fails to offer any substantive explanation or support for this assertion. See Protest at 14; Comments at 4 n.5.

Further, evaluation ratings and the number of positive or negative evaluation assessments are merely a guide to, and not a substitute for, intelligent decision making in the procurement process. *NCI Info. Sys., Inc.*, *supra* (*citing Affolter Contracting Co., Inc.*, B-410878, B-410878.2, Mar. 4, 2015, 2015 CPD ¶ 101 at 11 n.10). Thus, even if the agency had assessed Amentum with a substantial confidence rating under the program execution factor, the record is clear that the agency considered the identified benefits of Vertex's program execution proposal to be more advantageous than those identified in Amentum's. AR, Exh. 5, SSDD at 4-5. In light of the above, and given our conclusions that the past performance and cost evaluations were reasonable, we find that the agency's unreasonable finding of decreased confidence related to Amentum's proposed ordnance managers had no impact on Amentum's competitive standing, and therefore the protester was not prejudiced.

In conclusion, the protester's challenge to the agency's past performance and cost evaluations lack merit and, although the agency's discussions were misleading, the protester cannot reasonably demonstrate competitive prejudice from this error. Ultimately, the selection of Vertex's lower-cost, higher-rated proposal was reasonable and consistent with the FOSR.

The protest is denied.

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General Counsel