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Decision

Matter of: Trace Systems, Inc.

File: B-422056.9

Date: March 12, 2025

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DIGEST

1. Protest that the agency unreasonably evaluated past performance is sustained where the record demonstrates both that the evaluation did not conform to the solicitation and that there is a reasonable possibility that the protester was competitively prejudiced.
 2. Protest that the agency unreasonably evaluated the awardee's price is denied where the evaluation was reasonable and consistent with procurement law and regulation.
 3. Protest that the awardee had undisclosed subcontractors--premised on teaming agreements between the awardee and other firms--is denied, because the teaming agreements are contracts between private parties and whether the awardee performs in accordance with its proposal is a matter of contract administration.
 4. Protest that the agency unreasonably failed to consider the awardee's financial viability is denied because, in this task order procurement, the agency was not required to conduct a responsibility determination of the awardee.
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DECISION

Trace Systems, Inc., of Vienna, Virginia, protests the issuance of a task order to TeleCommunication Systems, Inc. (Comtech), of Annapolis, Maryland, under request for task execution plan (RTEP) No. PANAPG-22-P-0000-019320, issued by the Department of the Army. The task order was issued through the Army's Global Tactical

Advanced Communication Systems (GTACS) II multiple award indefinite-delivery, indefinite-quantity (IDIQ) contract. The contractor is to provide global field service representative (GFSR) support services under a task order known as GFSR II. The protester challenges as unreasonable the agency's past performance and price evaluations, asserts that the awardee has undisclosed subcontractors in violation of the solicitation terms, and asserts that the agency failed to reasonably consider the awardee's financial viability.

We sustain the protest.

BACKGROUND

The Army sought a contractor to provide global support of government communications, primarily the operability and sustainment of a variety of tactical and strategic antenna systems. The RTEP, issued to holders of a GTACS II IDIQ contract and in accordance with Federal Acquisition Regulation (FAR) section 16.505, contemplated the issuance of a single cost-plus-fixed-fee and cost task order with a 9-month base period and four 12-month option periods. Agency Report (AR), Tab 3, RTEP at 1. The task order would be issued to the offeror whose task execution plan (TEP) represented the best value to the government, considering the following factors: technical, past performance, and cost/price.¹ RTEP at 19-20. The past performance factor was significantly more important than cost/price. *Id.* at 19. The technical factor would be evaluated as acceptable or unacceptable and would not be included in the tradeoff analysis. *Id.* at 19-20. The agency's evaluation of Trace's and Comtech's proposals as acceptable under the technical factor is not at issue in this protest.

Under the past performance factor, the agency required each offeror to submit a minimum of two and no more than five past performance references. *Id.* at 9. Each offeror was to submit a minimum of two past performance references for itself as prime and at least one for each significant subcontractor.² *Id.* Each past performance reference would be evaluated for recency, relevance, and quality. *Id.* at 21-22. A reference would be considered recent if any part of it had been completed within 60 months of the date of the issuance of the solicitation. *Id.* at 21. Recent past performance references would be evaluated to determine how relevant they are to the current requirement. The RTEP advised offerors that "[r]elevancy is a measure of the extent of similarity between the service/support effort, complexity, dollar value, contract type, subcontract/teaming, or other comparable attributes of past performance examples and the solicitation requirements[,] and a measure of the likelihood the past performance is an indicator of future performance." *Id.*

¹ As originally issued, the RTEP also provided for a small business evaluation factor. On November 14, 2024, the agency amended the RTEP and removed small business as an evaluation criterion. AR, Tab 11, Source Selection Decision (SSD) at 1 n.1.

² The solicitation defined a significant subcontractor as a subcontractor that is proposed to perform more than 20 percent of the total value of required services. *Id.*

The agency identified four critical capabilities that would be used in the evaluation of relevancy: (1) maintenance and logistical support of fixed/strategic³ terminal sustainment; (2) maintenance and logistical support of tactical terminals; (3) cyber security installation of Information Assurance Vulnerability Assessment; and (4) Space and Missile Defense Command (SMDC)/Army Forces Strategic Command (ARSTRAT) certification testing and generation of reports. RTEP at 11-12. (The first two critical capabilities are relevant to the protester's challenge to the reasonableness of the past performance evaluation; we refer to these as the fixed/strategic terminal and tactical terminal.) The RTEP further advised offerors that a past performance reference that demonstrated more of the following four critical capabilities "may receive a higher relevancy rating than an example that demonstrates fewer critical capabilities."⁴ *Id.* at 22.

The agency would evaluate the quality of each past performance reference using past performance questionnaires, interviews, Contractor Performance Assessment Reporting System results, and other sources. *Id.* at 21. After every recent past performance reference had been evaluated for relevancy and quality, the agency would assign an overall performance confidence rating of substantial confidence, satisfactory confidence, neutral confidence, limited confidence, or no confidence. *Id.* at 23. The solicitation provided that, in determining the past performance confidence rating, the agency "may give greater value to past performance examples containing Critical Capabilities 1 [fixed/strategic] and 2 [tactical] as these are more critical performance areas than Critical Capabilities 3 [cyber security installation] and 4 [SMDC/ARSTRAT certification testing]." *Id.*

This procurement has been the subject of numerous GAO protests. Trace protested the first issuance of a task order to Comtech, and GAO dismissed that protest when the agency took corrective action. *Trace Sys., Inc.*, B-422056, Nov. 6, 2023 (unpublished decision). Trace protested the second task order issuance to Comtech, and GAO dismissed that protest when the Army indicated that it would take corrective action. *Trace Sys., Inc.*, B-422056.2 *et al.*, Apr. 2, 2024 (unpublished decision). Trace again protested the issuance of a task order to Comtech, and GAO again dismissed the protest when the agency took corrective action. *Trace Sys., Inc.*, B-422056.6, Aug. 14, 2024 (unpublished decision). GAO denied the protester's challenge to the Army's corrective action and the decision to amend the solicitation. *Trace Sys., Inc.*, B-422056.7, B-422056.8, Nov. 8, 2024, 2024 CPD ¶ 279. Trace now protests the most recent task order issuance to Comtech.

³ The Army explains that it used fixed and strategic interchangeably in this procurement. Resp. to Comments at 3.

⁴ The agency would assess each reference as very relevant, relevant, somewhat relevant, or not relevant. *Id.* at 22-23.

The table below summarizes the Army's most recent evaluation of Trace's and Comtech's proposals under the past performance factor; D means demonstrates, P means partially demonstrates, and X means does not demonstrate:

TRACE						
Example Number	Recent	Relevancy	Critical Capabilities			
			Fixed/Strategic	Tactical	3	4
1	Yes	Very Relevant	D	D	D	D
2	Yes	Relevant	D	D	D	X
3	Yes	Very Relevant	D	D	D	D
COMTECH						
1	Yes	Relevant	X	D	D	X
2	Yes	Very Relevant	D	D	D	X
3	Yes	Very Relevant	D	D	D	D
4	Yes	Somewhat Relevant	X	D	D	X

AR, Tab 11, SSD at 13-14.

The table below summarizes the agency's evaluation of the proposals from Trace and Comtech:

Factor	Offeror	
	Trace Systems	Comtech
Technical	Acceptable	Acceptable
Past Performance	Substantial Confidence	Substantial Confidence
Evaluated Cost/Price	\$564,080,180	\$544,349,538

Id. at 9. The source selection authority (SSA) concurred with and adopted the evaluation record. *Id.* at 14. Because the Army evaluated Trace and Comtech as substantial confidence under past performance, the SSA first considered whether the offerors' past performance was essentially equal, or whether one is of higher quality over the other. *Id.* The SSA found that, notwithstanding the same adjectival ratings, Trace had the better past performance. *Id.* at 17. The SSA noted that Trace "Demonstrated" more Critical Capabilities within some of its examples, when compared to [Comtech]." *Id.*

The SSA explained three bases for her determination. First, each past performance reference was to demonstrate four critical capabilities. Trace provided three past performance references, and Comtech provided four. Thus, Trace had 12 opportunities to demonstrate critical capabilities and did so 11 times, and Comtech had 16 chances and did so 11 times. Trace thus demonstrated critical capabilities within its past performance examples at a higher rate than Comtech did. *Id.* A second discriminator was the frequency with which the offerors demonstrated the fixed/strategic and tactical critical capabilities, which were more important than the other two. The SSA noted that

Trace demonstrated those critical capabilities in all three of its past performance references, whereas Comtech demonstrated fixed/strategic and tactical critical capabilities in two out of four of its past performance references. *Id.* Finally, the SSA noted that Trace “provided more [past performance] examples that demonstrated its ability to perform requirements supporting both tactical *and* strategic terminals *under the same contract*, which again is the primary mission of the GFSR II contract.” *Id.*

Having found that Trace offered better past performance, the SSA then considered whether that better past performance “warranted paying a price premium of \$19,730,642, or approximately 3.6 [percent], over [Comtech’s] identically rated (albeit not better), lower-cost proposal when Past Performance is significantly more important than cost/price.” *Id.* at 18. After reviewing the past performance record in some detail, the SSA determined that the advantages in Trace’s past performance record did not warrant paying the required price premium. *Id.* at 23.

The Army issued the task order to Comtech, *id.* at 25, and this protest followed.⁵

DISCUSSION

Trace contends that the Army’s past performance evaluation abandoned the performance work statement’s (PWS’s) definitions of fixed/strategic and tactical terminals when it found that Comtech’s past performance reference 3 demonstrated fixed/tactical experience. As explained below, we find that the record supports that allegation, and the protester has demonstrated a reasonable possibility that it was competitively prejudiced; accordingly, we sustain that allegation. The protester also asserts that the agency’s price reasonableness and price realism analyses were flawed, that the Army should have found Comtech’s proposal ineligible for failure to conform to the material requirement that offerors disclose proposed subcontractors, and that the agency failed to reasonably consider the awardee’s financial viability; as discussed below, we deny those allegations.

Evaluation of Past Performance

As will be discussed in some detail below, the parties assert competing definitions of tactical and fixed/strategic terminals. Trace contends that the definition is set forth in

⁵ The awarded value of the task order at issue exceeds \$25 million. Accordingly, at the time this protest was filed on November 26, 2024, this procurement was within our jurisdiction to hear protests related to the issuance of orders under multiple-award IDIQ contracts that were awarded under the authority of title 10 of the United States Code. 10 U.S.C. § 3406(f)(1)(B); see National Defense Authorization Act for Fiscal Year 2025, Pub. L. No. 118-159, ____ Stat. ____ § 885 (2024) (amending jurisdictional threshold to \$35 million for protests of orders placed under IDIQ contracts awarded under authority of title 10, effective December 23, 2024); *Technatomy Corp.*, B-405130, June 14, 2011, 2011 CPD ¶ 107 at 5-6 (changes to jurisdiction will not be given retroactive effect, absent specific statutory direction).

the PWS, and that tactical terminals are 1-6 meters in diameter and fixed/strategic terminals are 7-9 meters in diameter. AR, Tab 4, PWS at 2. The Army maintains that the sizes are references and that the determinative attributes of the terminals is their function. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 32. The choice of definition is determinative of whether the agency's evaluation was consistent with the terms of the solicitation. We consider the competing definitions and agree with Trace that the PWS defines terminals in terms of size; the Army's evaluation is thus inconsistent with the solicitation. We then consider whether Trace has demonstrated a reasonable possibility that it was prejudiced by the evaluation error. We find that Trace has demonstrated a reasonable likelihood of prejudice, and we sustain the allegation that the agency unreasonably evaluated past performance.

Challenged Evaluation Finding

Trace takes issue with the agency's finding that Comtech demonstrated critical capability 1 fixed/strategic terminal experience in past performance reference 3.⁶ Trace disputes the Army's finding that Comtech demonstrated experience with fixed/strategic terminals when those terminals were smaller than 7-9 meters. Comments at 23. Specifically, the protester takes issue with the agency's conclusion that Comtech's "[DELETED] meets the definition of a strategic/fixed terminal because it supports multiple modems and missions, as well as a high aggregate throughput with multiple users." The agency asserts that "[t]hese ISAs are also listed in the RTEP PWS section 1.0 as examples of both tactical and strategic/fixed terminals, depending on configuration type." AR, Tab 8, Comtech Past Performance Eval. at 28.

Trace argues that the solicitation unambiguously defined fixed/strategic and tactical terminals in terms of size. Comments at 10. In this regard, the solicitation defined tactical as a terminal between 1-6 meters and strategic as a terminal between 7-9 meters. The protester contends that the agency's "reclassification" of systems smaller than 7 meters as strategic conflicts with the PWS evaluation criteria. *Id.* at 8. The Army contends that it is the functional/operational characteristics of a terminal that

⁶ The protester also challenges the agency's evaluation of reference 2 from Trace's proposal. The intervenor, however, contends that the protester's challenge to the agency's evaluation of past performance reference 2 is untimely. Intervenor's Comments at 7. Comtech notes that in the protester's comments on the agency report from Trace's second protest of this procurement, B-422056.2, Trace argued that Comtech's past performance references 1 and 3 did not include the required fixed/strategic terminals and that the relevancy rating of both references was unreasonable. *Id.* Comtech asserts that, while Trace did not challenge the reasonableness of the evaluation of past performance reference 2 in its second protest, Trace had the basis for such a challenge at that time. *Id.* Comtech argues that having failed to challenge the evaluation of reference 2 in its second protest, the allegation is now untimely. *Id.* We agree and dismiss the protester's challenge of the agency's evaluation of reference 2. 4 C.F.R. § 21.2(a)(2).

render it fixed/strategic or tactical and not its size. COS/MOL at 32. The agency asserts that its evaluation of past performance was reasonable and consistent with the terms of the solicitation. *Id.* at 24.

Generally, 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 statutes and regulations, because determining the relative merit or relative relevance of an offeror's past performance is primarily a matter within the agency's discretion. *TekSynap Corp.*, B-419862.4 *et al.*, July 12, 2022, 2022 CPD ¶ 199 at 11. Where a dispute exists as to the meaning of a particular solicitation provision, our Office will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all its provisions; to be reasonable, an interpretation must be consistent with such a reading. *Noble Supply & Logistics, Inc.*, B-418141, Jan. 16, 2020, 2020 CPD ¶ 32 at 11.

The reasonableness of the agency's past performance evaluation is essentially a matter of solicitation interpretation. Trace contends that the PWS defines fixed/strategic terminals in terms of size; the Army argues that the terminals are defined in terms of function. As explained below, we agree with the protester, finding that its interpretation of the RTEP is supported by the plain language of the solicitation.

Solicitation Language

The PWS contained the following statement defining the scope of the requirement:

1.0 Scope. This Performance Work Statement (PWS) describes the Global Field Support Representative (FSR) support services the Contractor shall be required to perform for Communications for the Government. These efforts are primarily for, but are not limited to, the Tactical (1-6 meter) and Strategic (7-9 meter) antenna system such as the Deployable Ku Earth Terminal (DKET); Mobile DKET; Secure Internet Protocol Router (SIPR)/Non-Secure Internet Protocol Router (NIPR) Access Point (SNAP); United States Marine Corps (USMC) Support Very Small Aperture Terminal; (VSAT) Small, Medium, and Large systems and associated Commercialization efforts; Micro VSAT; VSAT; Inflatable Satellite Communications (SATCOM) Terminal (ISA)); Multinational Information Sharing (MNIS) Combined Enterprise Regional Information Exchange System (CENTRIXS); Coalition Partner Network-X (CPN-X); and Combined Joint Task Force (CJTF)-Operation Inherent Resolve (OIR) Area of Operations (AO)-wide Network operability and sustainment. The Contractor shall support units, systems and networks within, but not limited to, the following Areas of Responsibilities (AORs): Central Command (CENTCOM), Europe Command (EUCOM), Africa Command (AFRICOM), Indo-Pacific Command (INDOPACOM), Southern Command (SOUTHCOM), Northern Command (NORTHCOM), Special Operations Command (SOCOM), and United States Space Force (USSF). These

services may be rendered for use on other Command, Control, Communications (C3) systems and/or networks as required to meet operations. Support shall be provided in Continental United States (CONUS), Outside Continental United States (OCONUS), and in Southwest Asia (SWA).

AR, Tab 4, PWS at 2. The Army's evaluation of Trace's past performance contains this definition of fixed/strategic and tactical terminals:

This evaluation will address whether each example's terminal is strategic/fixed (Critical Capability -1) or tactical (Critical Capability 2) and explain why it is a strategic/fixed or tactical terminal. Strategic/fixed terminals are intended for providing network services with multiple modems and multiple missions with high throughput requirements supporting a high number of users. Tactical terminals are intended to be rapidly deployable and be up and running quickly; the terminals support single missions, lower throughput, and less manpower. Tactical terminals rely on strategic/fixed terminals for pulling network services. Ultimately, it is the function of the terminal, and not the physical size, which determines whether the terminal is strategic/fixed or tactical.

AR, Tab 8, Comtech Past Performance Evaluation at 6.

The Army argues that Trace's notion that terminals are defined by size is "baseless, as size was included in the PWS as nothing more than mere reference." COS/MOL at 32. The Army contends that the list, "including size references, was not exhaustive nor exclusive and clearly indicated that the reference sizes included in the parentheses were merely a guidepost for Offerors." *Id.* at 34.

In our view, PWS section 1.0 sets forth specific criteria for the evaluation of relevance of past performance. Section 1.0 of the PWS first advised offerors that performance would "primarily" entail "Tactical (1-6 meter) and Strategic (7-9 meter) antenna system." AR, Tab 4, PWS at 2. Although satellite terminals come in sizes smaller than 1 meter and larger than 9 meters, primarily, contractor performance would utilize terminals from 1-9 meters in size. Second, section 1.0 provided a lengthy list of representative satellite terminals; that list did not contain any evaluation criteria or salient characteristics of the listed terminals. See *id.* In this PWS paragraph, the only criteria provided for determining whether a terminal was fixed/strategic or tactical was this: "Tactical (1-6 meter) and Strategic (7-9 meter) antenna system." *Id.* A plain reading of this language supports the reasonableness of Trace's assertion that the PWS defined satellite terminals in terms of size.

The agency asserts three defenses for the reasonableness of its selected interpretation. We considered above and rejected the Army's first defense, that PWS section 1.0 defines terminal size in terms of functional and operation considerations. We consider below the agency's two remaining defenses.

The Army argues that “it’s clear that the Agency experts who drafted the provision desired the particular requirement to deal in generalities rather than absolutes.” COS/MOL at 34. For example, the agency asserts, “DKET terminals are contemplated by the PWS and are not explicitly categorized as Tactical or Strategic/Fixed.” *Id.* at 35. According to the agency, it was up to the evaluator, in his discretion, to determine the DKET terminal’s function. *Id.* Yet, the agency evaluator stated that “DKETs are also listed in the RTEP PWS section 1.0 as examples of strategic/fixed antenna systems to be supported under this requirement.”⁷ AR, Tab 8, Comtech Past Performance Evaluation at 20.

The evaluator’s representation that the PSW provides that DKETs are examples of strategic/fixed antenna systems is not supported by the record. The PWS does not “explicitly categorize[]” DKET terminals as “Tactical or Strategic/Fixed” and is inconsistent with the evaluator’s claim that those same terminals are “listed in the RTEP PWS section 1.0 as examples of strategic/fixed antenna systems.” PWS section 1.0 does not, in fact, categorize any of the listed terminals as fixed/strategic or tactical, and the only reference to terminal size is “Tactical (1-6 meter) and Strategic (7-9 meter) antenna system.” AR, Tab 4, PWS at 2. The plain language of the PWS provides no support for the evaluator’s contention that DKET terminals “are listed in the RTEP PWS section 1.0 as examples of strategic/fixed antenna systems to be supported under this requirement.” See AR, Tab 8, Comtech Past Performance Evaluation at 19-20; see also AR, Tab 4, PWS at 2 (listing “Tactical (1-6 meter) and [Fixed/]Strategic (7-9 meter) antenna system such as. . .”). Accordingly, the agency’s argument that the PWS supports a general interpretation of the terms strategic/fixed and tactical is not supported by the record.

The Army further argues that Trace’s proposal did not comply with the size criteria the protester now asserts is required by the PWS. In this regard, the Army argues that “it’s worth noting that **Trace’s own past performance examples provided Strategic/Fixed terminals that deviated from the 7-9 meter size range** despite Trace’s argument hinging on the premise that the PWS parenthetical size references are sacrosanct--or to be followed without deviation.” COS/MOL at 36, *citing* AR, Tab 14, Trace Past Performance Proposal at 7-13. Trace’s second past performance reference states that the protester “provided maintenance and logistical support services on strategic terminals ranging from 7.0-15.2m.” AR, Tab 14, Trace Past Performance Proposal at 8. Similarly, Trace’s third past performance reference states that a proposed subcontractor “provided fixed terminal maintenance and logistical support for [Department of Defense

⁷ The evaluator also notes that “VSATs are [] listed in the RTEP PWS section 1.0 as an example of tactical antenna systems,” and that “ISAs are [] listed in the RTEP PWS section 1.0 as examples of both tactical and strategic/fixed terminals, depending on configuration type.” AR, Tab 8, Comtech Past Performance Evaluation at 21, 28. The PWS has a lengthy list of terminals, describes the salient features of none of the terminals, and identifies none of them as fixed/strategic, tactical, or both. See AR, Tab 4, PWS at 2.

(DOD)] Gateway systems/teleports ranging in size from 7.3m, 9.3m, to 11.1m.” *Id.* at 12-13. The Army asserts that “[s]uch sizes clearly deviate and exceed the 7m-9m references contained within the PWS” for strategic/fixed terminals. COS/MOL at 36. The protester claims that “Trace’s experience supporting even larger systems in the past does not undermine its position that the Solicitation size ranges are definitive.” Comments at 12. Trace argues that, “[j]ust as Comtech included past performance references to terminals [DELETED] in its [DELETED] past performance example, Trace’s past work demonstrates flexibility and expertise but does not suggest that size ranges in the Solicitation are ambiguous or expandable.” *Id.* We agree with the protester.

As an initial matter, the agency’s argument appears to present a false comparison between its own evaluation and the protester’s own proposal submission. The agency’s evaluation conflated the size parameters established in the solicitation between tactical and strategic terminals; in the Army’s evaluation, the size of a terminal had no bearing on its classification as fixed/strategic or tactical. Neither the protester’s proposal, nor the awardee’s proposal, took that kind of liberty with the classification of terminals. Rather, as noted above, the protester referenced experience with strategic terminals that fell within the PWS’s size parameters for such terminals as well as terminals larger than the PWS’s parameters. Similarly, the awardee referenced experience with tactical terminals that fell within the PWS’s size parameters for such terminals as well as terminals smaller than the PWS’s parameters. Unlike the agency, they did not associate the PWS’s size parameters for tactical terminals with strategic terminals. In any event, as noted above, the PWS advised offerors that contract performance would entail “primarily” “Tactical (1-6 meter) and Strategic (7-9 meter) antenna system.” AR, Tab 4, PWS at 2. That both offerors’ past performance references included terminals within and outside of those size criteria does not negate the fact that the PWS categorized fixed/strategic and tactical terminals by size, while indicating the size of terminals central to contract performance.

In summary, the plain language of the solicitation supports Trace’s claim that the agency unreasonably departed from the announced past performance evaluation criteria. Utilizing a definition of fixed/tactical and strategic terminals that was inconsistent with the PWS, the Army found that Comtech’s past performance reference 3 demonstrated experience under one of the two most important critical capabilities--fixed/strategic terminals. Of Comtech’s four past performance references, reference 3 was one of only two that demonstrated such experience. AR, Tab 11, SSD at 10-12. We therefore find the Army’s past performance evaluation inconsistent with the terms of the solicitation.

Competitive Prejudice

As a general matter, our Office resolves any doubts regarding prejudice in favor of a protester. *ITility, LLC*, B-421871.3, B-421871.4, May 3, 2024, 2024 CPD ¶ 102 at 5. Comtech’s past performance reference 3 did not demonstrate experience with 7-9 meter fixed/strategic terminals. Here, had the Army evaluated Comtech’s past

performance consistent with the criteria in PWS section 1.0, the awardee would not have received credit under past performance reference 3 for fixed/strategic critical capability experience. Because critical capability one and two were the most important critical capabilities, the evaluation error was not insignificant. There is thus a reasonable possibility that a proper past performance evaluation would have resulted in a best-value tradeoff analysis identifying Trace's proposal as representing the best value to the agency. Accordingly, we conclude that Trace has established a reasonable likelihood of competitive prejudice, and this protest ground is sustained. *Meridian Knowledge Sols., LLC, B-420150 et al.*, Dec. 13, 2021, 2021 CPD ¶ 388 at 15 (noting that this Office will resolve doubts regarding prejudice in favor of the protester; a reasonable possibility of prejudice is sufficient to sustain a protest).

Evaluation of Comtech's Price Proposal

Trace challenges the reasonableness of both the Army's reasonableness and realism analyses of Comtech's price proposal. As discussed below, we deny the challenges.

Price Reasonableness Analysis

Trace argues that the Army's analysis of price reasonableness is fundamentally flawed and fails to account for critical risks associated with Comtech's proposed price. Comments at 21. The protester argues that, while "[t]he Agency determined Comtech's Total Evaluated Price (TEP) was reasonable based on comparisons to Trace's price and the Independent Government Estimate (IGE)," this "determination neglects the clear risks posed by Comtech's bid, which is significantly below the IGE." *Id.* Trace contends that, rather than considering the implications for performance of Comtech's proposed price, the Army is "relying instead on the unsupported assumption that price competition ensures reasonableness." *Id.* This approach is inadequate, Trace asserts, "and demonstrates a lack of diligence in evaluating Comtech's proposal." *Id.* The Army contends that its price reasonableness determination "was compliant with the Federal Acquisition Regulation and the solicitation, was reasonable, and was adequately documented." COS/MOL at 55.

The purpose of a price reasonableness analysis is to ensure that the government does not pay too high a price for a contract or task order. FAR 15.404-1(b); *NTT Data Servs. Fed. Gov't, LLC, B-419197.2*, July 6, 2021, 2021 CPD ¶ 253 at 5. The RTEP advised offerors that "the analytical techniques and procedures prescribed in FAR 15.404-1 for evaluating an Offeror's TEP may be used singly or in combination with others to ensure the costs are fair, reasonable, and/or realistic." AR, Tab 5, RTEP amend. 003 at 23. The FAR includes a non-exhaustive list of permitted price analysis techniques that ensure that the agency pays a fair and reasonable price, including, as relevant here: (1) comparison of prices received, (2) comparison of prices received to historical prices, and (3) comparison of prices received to an independent government cost estimate (IGCE). FAR 15.404-1(b)(2). The FAR states that "[t]he first two techniques at 15.404-1(b)(2) [comparison of prices received, and comparison to historical prices] are the preferred techniques." *Id.* at (b)(3). The manner and depth of an agency's price

analysis is a matter committed to the discretion of the agency, which we will not disturb provided that it is reasonable and consistent with the solicitation's evaluation criteria and applicable procurement statutes and regulations. *NTT Data Servs. Fed. Gov't, LLC, supra* at 5-6.

The SSA determined Comtech's total evaluated price to be fair and reasonable "utiliz[ing] the techniques in FAR 15.404-1(b)(2)(i) and 15.404(b)(2)(v)." AR, Tab 11, SSD at 25. The SSA compared Comtech's lower total evaluated price of \$544,349,538 to Trace's higher total evaluated price of \$563,815,044 and "note[d] that such total evaluated prices were received as the result of adequate price competition under 15.403-1(c)(1)." *Id.* The SSA also compared both offerors' total evaluated prices to the IGE, which was \$604,988,955, and noted that both offeror's total evaluated prices were less than the IGE. *Id.*

Trace argues that, "[w]hile the Agency asserts compliance with FAR 15.404-1, its reliance on price comparisons and superficial analysis does not meet the standard of thoroughness required to ensure fair and sustainable pricing." Comments at 21. The agency did more than assert compliance with the FAR; the record validates compliance. Trace further argues that the Army determined Comtech's TEP was reasonable based on comparisons to Trace's price and the IGE but that the "determination neglects the clear risks posed by Comtech's [proposed price], which is significantly below the IGE." *Id.* The protester contends that "[t]his massive discrepancy raises serious questions about whether Comtech's price realistically accounts for the costs of contract performance." *Id.*

Again, the purpose of a price reasonableness analysis is to ensure that the government does not pay too high a price. Comtech's price is lower than the protester's. See AR, Tab 11, SSD at 18. Ignoring that fact, Trace contends that the agency failed to consider the price risk in Comtech's proposal. Questions about price risk relate to the realism of a proposed price and not the reasonableness of the price. In this regard, the protester's arguments about price risk conflates the concepts of price reasonableness and price realism. Notwithstanding the protester's argument, we conclude the record demonstrates that the Army's price reasonableness analysis complied with the solicitation and the requirements of FAR section 15.404-1, and this allegation is denied.

Cost Realism Analysis of Comtech's Fringe Benefit Rate

Trace contends that the Army conducted a flawed cost realism analysis of Comtech's fringe benefits rate. Comments at 21. The Army argues that its cost realism analysis of Comtech's proposed fringe rate was thorough, reasonable and adequately documented. COS/MOL at 57.

When an agency evaluates a proposal for the award of a cost-reimbursement task order, as in this case, the offeror's proposed costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. FAR 15.404-1(d), 16.505(b)(3); *OBXtek, Inc.*, B-419478,

B-419478.2, Mar. 23, 2021, 2021 CPD ¶ 156 at 4. Consequently, the agency must perform a cost realism analysis to determine the extent to which the offeror's proposed costs are realistic for the work to be performed. FAR 15.404-1(d)(1); see *OBXtek, Inc., supra*. Our review of an agency's cost realism evaluation is limited to determining whether the cost analysis is reasonable; a protester's disagreement with the agency's judgment, without more, does not provide a basis to sustain the protest. *Id.*

A regression analysis is one reasonable method for evaluating the realism of an offeror's proposed rates. See *OBXtek, Inc., supra* at 5. A regression analysis generates a prediction of statistically likely outcomes based on a set of known data. *Id.* at 5 n.4. In a realism analysis, the known data is the offeror's historical rates, in this case the fringe benefit rate. The regression analysis then determines the likelihood that the actual future rate will be the proposed rate, or, in other words, the realism of the proposed rate. See AR, Tab 17, Comtech Cost Evaluation at 11.

The Army used regression analysis to assess the realism of Comtech's proposed fringe benefit rate. The agency used an 80 percent confidence rating, meaning that 80 percent of the time one would be confident that the proposed rate would fall within the range predicted by the regression analysis. COS/MOL at 59, *citing* AR, Tab 17, Comtech Cost Evaluation at 9. For both the domestic and overseas locations, the realism analysis predicted that the proposed rate would fall within the 80 percent confidence level's range. AR, Tab 17, Comtech Cost Evaluation at 11. Comtech proposed a base year overseas fringe rate of [DELETED] percent, and the regression analysis predicted that the proposed rate should be within the range of [DELETED] and [DELETED] percent. *Id.* Comtech proposed a domestic fringe rate of [DELETED] percent, and the regression analysis predicted the proposed fringe rate would be between [DELETED] and [DELETED] percent. *Id.* The Army thus took no exception to either of the proposed fringe rates. *Id.*

Trace contends that the Army's "methodology overlooks practical and historical factors that are critical to assessing their sustainability." Comments at 22. Those factors include, principally, the fact that Comtech's proposed fringe for overseas personnel is lower than that of the prior contractor, Envistacom, and that firm went bankrupt. *Id.* The protester contends that the agency's failure to address this issue "renders its price reasonableness and cost realism analyses arbitrary and capricious." *Id.* We disagree. The Army utilized regression analysis to assess the likelihood that Comtech had accurately forecast its fringe rate for both contract performance locations. That analysis indicated that the awardee's proposed fringe rates were sufficiently probable that the agency accepted them as realistic. Comtech's objections to the determination--particularly those that reach back to the prior contractor--have not shown the Army's realism analysis to be unreasonable, and this allegation is denied.

Comtech's Failure to Disclose Subcontractors

Trace asserts that Comtech failed to disclose that [DELETED] was a subcontractor and failed to include [DELETED] in its proposal. Protest at 36. Thus, the protester argues,

Comtech's proposal failed to conform to the material solicitation requirement that offerors [DELETED] and the agency should find the awardee's proposal unacceptable. *Id.* at 39-40. The Army argues that Comtech did not propose the use of [DELETED] and "[t]here is no RTEP provision violated by a [DELETED] proposal, plain and simple." COS/MOL at 49.

A contracting agency's evaluation of offeror responses in a task order competition is a matter within the agency's discretion. *Booz Allen Hamilton, Inc.*, B-420116.6, B-420116.7, Aug. 22, 2022, 2022 CPD ¶ 221 at 7. In reviewing an agency's evaluation, we will not reevaluate the responses; rather we will examine the evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and with procurement statutes and regulations. *Id.* at 8. A protester's disagreement with the agency's evaluation judgments, or with the agency's determination as to the relative merits of competing solicitation responses, does not establish that the evaluation or the source selection decision was unreasonable. *Id.*

Relevant to this protest allegation, the record contains these three undisputed facts. Comtech has a teaming agreement with [DELETED] that was executed on December 23, 2022. The purpose of the teaming agreement was for [DELETED] to staff positions if Comtech won contract award. [DELETED] was not included in Comtech's proposal. AR, Tab 16, Debriefing Slides at 26.

Trace assumes that a firm that has entered into a teaming agreement with an offeror will be part of contract performance if that offeror is the contract awardee; in other words, [DELETED] and Comtech have a teaming agreement, and therefore [DELETED] will be a Comtech subcontractor. We agree with the Army that "Trace cannot backdoor a solicitation violation based on an agreement between two private companies." COS/MOL at 49. The teaming agreement is an arrangement between private parties, and issues surrounding its enforceability are not for GAO's consideration. *TRAX Int'l Corp.*, B-420361.6, Mar. 9, 2023, 2023 CPD ¶ 69 at 4. Neither the assertion that Comtech will rely on [DELETED] for contract performance nor the related assertion that Comtech's performance will not conform with its proposal are for GAO's consideration, because whether Comtech will perform in accordance with its proposal is a matter of contract administration. 4 C.F.R. § 21.5(a); *Castellano Cobra UTE MACC LEY 18-1982*, B-420429.4, June 17, 2022, 2022 CPD ¶ 150 at 5 (whether awardee complies with a requirement is a matter of contract administration, which we will not consider).

Bait and Switch

Trace argues that Comtech committed a bait and switch, whereby Comtech proposed that some subcontractor or subcontractors (the bait) would join Comtech in contract performance, but that Comtech "premeditated" that a significant portion of the work would be performed by [DELETED] (the switch). Protest at 42. The Army contends that Trace fails in its burden to both allege, and show, that Comtech engaged in an improper bait and switch regarding its subcontractors. COS/MOL at 49.

Bait and switch allegations typically concern key personnel and not subcontractors. A protester's argument that key personnel--or subcontractors--identified in an awardee's proposal will not perform under the resulting contract is generally a matter of contract administration that our Office will not review. Bid Protest Regulations, 4 C.F.R. § 21.5(c); *Platinum Bus. Servs. LLC*, B-419930, Sept. 23, 2021, 2021 CPD ¶ 348 at 7. To establish an impermissible bait and switch, a protester must show that a firm either knowingly or negligently represented that it would rely on specific personnel that it did not expect to furnish during contract performance, and that the misrepresentation was relied on by the agency and had a material effect on the evaluation results. *Id.* Even where there is evidence of a planned switch in key personnel, our Office will not find an impermissible bait and switch where there is no evidence of baiting, *i.e.*, an intent to replace proposed key personnel with less qualified personnel. *Id.*

Here, the basis for Trace's bait and switch allegation, as discussed immediately above, is the protester's speculation that Comtech must be planning to use [DELETED] for partial contract performance because the awardee has a teaming agreement with [DELETED]. Such speculation does not provide sufficient information to support this basis of protest, and we dismiss it. See *ICF Inc., L.L.C.*, B-419049.3, B-419049.4, Mar. 9, 2021, 2021 CPD ¶ 117 at 8-9 (stating that evidence of recruitment efforts--that is, a backup plan--does not, by itself, establish a bait and switch claim).

Comtech's Financial Viability

Trace argues that the FAR required the Army to make an affirmative determination of Comtech's responsibility. Protest at 53, *citing* FAR 9.103. The Army contends that a responsibility determination is not required prior to the issuance of a task order. COS/MOL at 60.

The FAR provides that "[n]o purchase or award shall be made unless the contracting officer makes an affirmative determination of responsibility" and that, "[i]n the absence of information clearly indicating that the prospective contractor is responsible, the contracting officer shall make a determination of nonresponsibility." FAR 9.103(b). The FAR further provides that, to be determined responsible, a prospective contractor must "[h]ave adequate financial resources to perform the contract, or the ability to obtain them." FAR 9.104-1(a). In the context of an order procurement under an IDIQ contract, once an offeror is determined to be responsible and is awarded a contract, there is no requirement that an agency make additional responsibility determinations during contract performance, though an agency is not precluded from doing so. *Owens & Minor Distrib., Inc. et al.*, B-422689 *et al.*, Sept. 16, 2024, 2024 CPD ¶ 223 at 16-17.

We agree with the Army that it was not required to make a responsibility determination of Comtech prior to the issuance of this task order, and this allegation is denied.⁸

⁸ In its comments on the agency report, Trace argues for the first time that "Comtech's public financial disclosures provide ample evidence that [Comtech] lacks the financial (continued...)

RECOMMENDATION

As detailed above, we sustain the protest on the basis that the agency unreasonably evaluated the awardee's past performance. We recommend that the Army reevaluate proposals consistent with this decision and make a new award decision. Alternatively, should the agency determine the current solicitation does not reflect its needs, we recommend that the agency amend the solicitation to reflect any revised evaluation criteria for past performance, request and evaluate new past performance and price proposals, and make a new award decision. In the event the reevaluation results in the selection of an offeror other than Comtech, we recommend that the agency terminate the task order issued to Comtech for the convenience of the government and issue the task order to the offeror found to represent the best value, if otherwise proper. We also recommend that Trace be reimbursed the costs of filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). Trace should submit its certified claim for costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Edda Emmanuelli Perez
General Counsel

stability necessary to perform the contract.” Comments at 23. Trace asserts that, “[w]hile a responsibility determination may not be explicitly required for task orders under the FAR, the solicitation mandates an evaluation of performance risk, which necessarily includes an assessment of financial viability.” *Id.*; see also Protest at 53, citing RTEP at 19 (noting evaluation factors for award; the solicitation does not include the phrase “performance risk”). This allegation that the Army’s evaluation failed to conform to a solicitation requirement is untimely filed more than 10 days after the protester knew the basis of protest. 4 C.F.R. § 21.2(a)(2). In any event, the allegation is without merit. The solicitation contained only two references to the evaluation of risk. One was the evaluation of the five parts of the technical factor, which were evaluated as acceptable/unacceptable. See RTEP at 20-21 (noting that an unacceptable proposal is one that “does not meet requirements of the solicitation and, thus, contains one or more deficiencies and is unawardable, and/or risk of performance is unacceptably high”). The other was the price realism analysis. See RTEP at 18. In short, the solicitation does not support the protester’s contention that the solicitation “mandates an evaluation of performance risk” based on a firm’s “financial stability”. See Comments at 23.