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Decision

Matter of: Owl International Inc., d/b/a Global, a 1st Flagship Company

File: B-423281; B-423281.2

Date: April 25, 2025

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DIGEST

1. Protest that agency misevaluated proposals by failing to assess professional compensation plans as provided in Federal Acquisition Regulation provision 52.222-46 is sustained where solicitation required offerors to submit information necessary to perform an evaluation and agency did not perform the required evaluation.
2. Protest that agency misevaluated technical and past performance proposals is denied where the evaluation was reasonable and consistent with the solicitation criteria.
3. Protest that agency misevaluated proposed costs by considering capped indirect costs to be realistic is denied where the solicitation provided for that treatment, and the evaluation was thus consistent with the terms of the solicitation.

DECISION

Owl International Inc., doing business as Global, a 1st Flagship Company, of Irvine, California, protests the award of a contract to PCCI, Inc., of Alexandria, Virginia, under request for proposals (RFP) No. N00024-23-R-4304, issued by the Department of the Navy, Naval Sea Systems Command, for services to manage, operate, and maintain the emergency ship salvage material (ESSM) system and support the Navy's oil and

hazardous substance spill response program worldwide. The incumbent contractor is a joint venture named Global PCCI JV, whose majority owner at 51 percent is the protester, Owl, and the awardee, PCCI, is the minority owner at 49 percent. Owl contends that the Navy misevaluated both firms' proposals and made an unreasonable source selection decision.

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

BACKGROUND

The Navy issued the RFP on September 28, 2023, to obtain proposals to provide services under an indefinite-delivery, indefinite-quantity (IDIQ) contract for five years, with a maximum value of \$315 million. Agency Report (AR), Tab 2, Consolidated RFP at 1-3. Offerors were directed to price services on a cost-plus-award-fee basis for operational efforts, and on a cost-plus-fixed-fee basis for nonoperational efforts. *Id.* at 2. The RFP included a statement of work (SOW) that described the general scope of the contract as providing engineering and technical services to support the ESSM system, provide operational and nonoperational support to the Navy's oil and hazardous substance spill response program. Additionally, the contractor would provide equipment operation, maintenance, and related support at remote sites for a range of operations. *Id.* at 15.

The RFP instructed offerors to submit proposals in three volumes: technical (volume I), cost/price (volume II), and solicitation package (volume III). *Id.* at 72. The RFP anticipated the award of a single IDIQ contract to the offeror whose proposal was evaluated as offering the best value to the government. The evaluation of proposals would utilize three factors, listed in descending order of importance: technical capability, past performance, and cost/price. *Id.* at 109. When combined, the technical capability and past performance factors were significantly more important than cost/price in determining which proposal provided the best value; in other words, the RFP indicated that the source selection would be based on a tradeoff among the technical capability, past performance, and cost/price factors. *Id.*

Under the technical factor, the RFP instructed offerors to address three elements in their technical proposals: personnel; management¹; and technical capability and experience. *Id.* at 74-80. Additionally, the RFP identified a fourth technical element, a sample problem, and stated that it would be optional for the agency to require.² *Id.* at 80. The evaluation of each element was described as follows:

¹ In the record, the management element is also referred to as the management approach/organization plan element. *E.g.*, AR, Tab 1, Contracting Officer's Statement (COS) at 2.

² Ultimately, after receiving proposals, the Navy issued a sample problem. A challenge to the evaluation of PCCI's sample problem was among several issues that our Office indicated would likely be dismissed, but the protester subsequently withdrew it.

The evaluation standard is:

- Element A: Personnel. The degree to which the proposal demonstrates that the Offeror is capable of providing personnel with the professional and technical skills to successfully perform the requirements of the [statement of work].
- Element B: Management. The degree to which the proposal demonstrates that the Offeror's management approach/organization plan is adequate to accomplish program objectives and satisfy all aspects of the [statement of work] and ESSM mission requirements based on the ESSM Operations Guide.
- Element C: Technical Capability and Experience. The degree to which the proposal demonstrates that the Offeror has the necessary technical capability and corporate experience related to storage, maintenance and operation of ESSM-type facilities, equipment, and systems.
- Element D: Sample Problem. The degree to which the response to the sample problem . . . demonstrates the Offeror's understanding of the Government's requirements and the ability to adequately and realistically solve a problem in a condensed period of time.

Id. at 109-110.

Within the technical capability evaluation, proposals were to be evaluated under each of the four elements described above, but the RFP expressly stated the elements were not considered subfactors and would not be separately rated. *Id.* The RFP also listed subject areas within elements that offerors were instructed to address; for example, key personnel resumes under the personnel element, and nine areas under the management approach/organization plan element, such as overall organizational structure, staffing levels, and training. *Id.* at 75-79. The RFP also stated that the technical capability evaluation would result in assessment of combined technical/risk ratings using color and adjectival rating pairs: blue/outstanding, purple/good, green/acceptable, yellow/marginal, or red/unacceptable. *Id.* at 110.

Under the past performance factor, the RFP indicated that the agency would evaluate the recency, relevance, and quality of the offeror's performance record. *Id.* at 111.³ The evaluation would then rate each performance reference as very relevant, relevant, somewhat relevant, or not relevant. *Id.* Then, taking into account the relevance of the references and the record of performance, the offeror's overall past performance would be assessed a confidence rating of substantial, satisfactory, unknown (or neutral), limited, or no confidence. *Id.* at 112.

³ Where page numbering in a document differs from the electronic pagination in the Adobe PDF file submitted to our Office, we cite the PDF page numbering.

The cost/price evaluation would be based on a total evaluated cost/price, using cost information provided by the offeror, principally scheduled labor rates, indirect rates, and the offeror's award fee/fixed fee. *Id.* Additionally, the RFP directed offerors to complete an accompanying cost worksheet by providing standard and overtime labor rates, and percentages for the firm's proposed fringe benefit rate, overhead rate, and general and administrative rate. AR, Tab 2e, RFP Worksheet L-2. For scheduled labor rates, the RFP explained that offerors were to propose burdened rates, excluding fee amounts, and therefore the Navy would "only evaluate the proposed scheduled labor rates for reasonableness and material balance." *Id.* at 113. Additionally, the RFP incorporated FAR provision 52.222-46, which provides for an assessment of the compensation of professional employees. *Id.* at 90.

For indirect rates, the RFP specified different evaluation methods depending on whether the offeror proposed to cap its indirect rates:

If the Offeror does not propose a ceiling for the indirect rates, a cost-realism evaluation will be performed by the Government on the proposed indirect rates to calculate the probable cost impacts that would be incurred in the course of performance. If proposed indirect rates are considered to be unrealistic, the Offeror's proposed rates will be adjusted upward to determine the Government evaluated indirect rate. No downward adjustment will be made. . . .

If the Offeror proposes a ceiling for any indirect rates, the evaluated rate(s) will be equal to the proposed ceiling rate as this ceiling rate represents the maximum cost risk to the Government and is therefore considered realistic.

Id. at 113.

Finally, the RFP provided that for purposes of evaluation, the offeror's proposed award-fee and fixed-fee "evaluated fee percentages will be equal to the proposed fee percentages." *Id.*

After an initial evaluation, the Navy held discussions with both offerors and requested final proposal revisions. The evaluation of final proposal revisions identified strengths and weaknesses in both firms' proposals under the technical capability factor. The agency then determined that in comparing the firms' evaluations, some strengths and weaknesses were offset by strengths or weaknesses of similar significance in the competing proposal, and thus were considered offsetting. Other strengths and weaknesses were determined not to have offsetting aspects in the competitor's proposal, and thus provided aspects with which to discriminate between the two proposals. AR, Tab 6, Source Selection Advisory Council (SSAC) Report at 8-16. For the past performance factor, the agency determined that both offerors had demonstrated performance records that were similar in relevance and quality, and that no aspect of the past performance evaluation provided a basis to distinguish between the competitors. *Id.* at 17.

In addition to those discriminating strengths and weaknesses, the overall evaluation produced the following ratings and total evaluated cost/prices:

	OWL	PCCI
TECHNICAL CAPABILITY	GOOD	OUTSTANDING
PAST PERFORMANCE	VERY RELEVANT/ SUBSTANTIAL CONFIDENCE	VERY RELEVANT/ SUBSTANTIAL CONFIDENCE
TOTAL EVALUATED COST/PRICE	\$204,108,658	\$214,357,758

AR, Tab 4, Source Selection Evaluation Board (SSEB) Report at 7, 24; AR, Tab 6, SSAC Report at 4; AR, Tab 7, Source Selection Decision Document (SSDD) at 3.

The SSAC advised that its review determined that PCCI's proposal was superior to an extent that justified paying its higher total evaluated cost/price, which represented a cost premium of 5 percent. AR, Tab 6, SSAC Report at 18-19. The source selection authority (SSA) then reviewed the evaluation and tradeoff recommendation and concurred with them. AR, Tab 7, SSDD at 2. The SSA then explained that based on independent judgment, PCCI's proposal represented the best value considering its superior technical evaluation, and cost/price premium of 5 percent. Based on that judgment, the SSA selected PCCI for award. *Id.* at 3. Following notice of the award and a debriefing, Owl filed this protest.

DISCUSSION

Owl challenges multiple aspects of the evaluation and source selection decision. We first turn to the protester's argument that PCCI was not a responsible contractor, which we dismiss as lacking a sufficient factual basis. We next determine that Owl's challenge to the Navy's failure to perform an evaluation of the offerors' professional compensation is valid and we sustain the protest on that basis. We then address the protester's remaining challenges to the evaluation of proposals, which we conclude are without merit.

Challenge to Affirmative Responsibility Determination

Owl's protest contends that PCCI lacked the financial capacity to perform the contract, and that the Navy ignored information regarding that lack of financial capacity that should have caused the Navy to find the firm not responsible to perform the contract. Protest at 66. In this regard, Owl asserts that PCCI proposed to cap its indirect costs below their documented historical rates and contends that PCCI also lacks adequate sources of financing that it will need to perform. *Id.* In Owl's view, the circumstances indicate that PCCI has less than a half million dollars in working capital, but its capped indirect costs put it at risk of financial losses that Owl argues could exceed \$26 million. *Id.*; see also Opp. to Req. for Dismissal at 9. In sum, Owl argues, the lack of access to capital to manage losses resulting from the firm's proposed indirect cost cap was

material information that the Navy failed to adequately consider, which should have resulted in the Navy finding PCCI was not a responsible offeror to perform this contract.

The Navy argues that Owl's challenge to the affirmative responsibility determination of PCCI is not an aspect of responsibility that GAO reviews and should therefore be dismissed. The RFP requirement that the contractor possess financial capability does not establish a specific objective standard that could constitute definitive responsibility criteria, the agency contends. Req. for Dismissal at 7. Further, the Navy argues that Owl has not identified a violation of law or regulation, or any information that would "rais[e] serious concerns that . . . the contracting officer unreasonably failed to consider available relevant information" regarding PCCI's responsibility. *Id.* at 6. Rather, the agency maintains that the record shows the contracting officer exercised reasonable business judgment in finding that PCCI was a responsible contractor.

Our Bid Protest Regulations, 4 C.F.R. section 21.5(c), generally exclude from our review, consideration of protests that challenge an affirmative responsibility determination, with limited exceptions. Those exceptions include that our Office will consider a protest alleging that specific objective standards of responsibility were not met, and that an affirmative responsibility determination failed to adequately consider information that was known or reasonably should have been known that, by its nature, would be expected to have a strong bearing on whether the awardee should be found responsible. 4 C.F.R. § 21.5(c); *MVM, Inc.*, B-421788.3, B-421788.4, Mar. 5, 2024, 2024 CPD ¶ 63 at 10. Our decision in *MVM* exemplifies the type of information that would meet our standard, where publicly available information indicated that the awardee's affiliate had settled false claims under a contract with a federal agency. *Id.* The information at issue here, in contrast, questions PCCI's need for and access to working capital. It does not rise to the level required by our regulations to support a challenge to the Navy's responsibility determination. Instead, Owl's allegations raise ordinary issues of financial capacity for the Navy to resolve. We therefore dismiss the challenge to the Navy's determination that PCCI is a responsible contractor.

Failure to Evaluate Professional Compensation

Owl argues that the Navy failed to assess the realism of the offerors' professional compensation as required by the RFP, which incorporated Federal Acquisition Regulation (FAR) provision 52.222-46. Protest at 72-73. That provision provides that "[t]he professional compensation proposed will be considered in terms of its impact upon recruiting and retention, its realism, and its consistency with a total plan for compensation." FAR provision 52.222-46(a).

The RFP instructed offerors to provide cost information in the proposal cost/price volume, including worksheet L-2. While the RFP instructions identified a requirement to provide scheduled labor rates, indirect costs, and fringe benefit costs, RFP at 113, it also instructed that all cells colored yellow in the worksheet were to be completed, which included a breakdown of the offeror's rates by location and performance period into fringe rates, overhead rates, and general and administrative rates. *Id.* at 84; AR, Tab 2e, RFP Worksheet L-2 at 6. Thus, while the scheduled labor rates were to be

proposed as fully burdened (exclusive of fee) fixed hourly rates, offerors were required to provide the applicable indirect burden percentages.

The analysis under FAR provision 52.222-46 requires the agency to conduct “in effect, a price realism evaluation regarding an offeror’s proposed compensation,” and the agency must also “compare the awardee’s proposed professional compensation to the incumbent’s.” *Bionetics Corp.*, B-419727, Jul. 31, 2021, 2021 CPD ¶ 259 at 5.

The Navy and PCCI argue that this ground of protest should be dismissed because the statement that the evaluation of scheduled labor rates would only consider reasonableness and balance was an obvious indication that the agency would not evaluate professional compensation under FAR provision 52.222-46, notwithstanding the inclusion of that provision in the RFP. Req. for Dismissal at 8-10 (arguing the RFP “statement excludes the possibility of price realism”); Intervenor’s Response to Req. for Dismissal at 18. Additionally, the Navy argues that the RFP also did not provide for the agency to obtain information needed to perform a comparison between the awardee’s professional compensation and the incumbent’s, thereby making it apparent on the face of the RFP that the Navy would not perform the second element of the analysis under FAR provision 52.222-46. Req. for Dismissal at 8-9. The Navy also argues that the RFP did not reference submission of a professional compensation plan in the proposal preparation instructions or evaluation criteria and did not request salary information or a description of fringe benefits provided to professional employees. *Id.* at 9. Accordingly, the agency argues, the RFP instructions “directly contradict[ed]” the evaluation that would have been required under FAR provision 52.222-46. *Id.* at 8.

We disagree.⁴ The RFP statement limiting the evaluation of the scheduled labor rates (to an assessment of reasonableness and material balance) is not contradicted--directly or implicitly--by FAR provision 52.222-46 since the evaluations consider different information. Specifically, the scheduled labor rates are burdened rates (what the contractor will charge the government, albeit without fee) whereas the evaluation under FAR provision 52.222-46 assesses professional employee compensation, which includes “salaries and fringe benefits.” FAR provision 52.222-46(a). Further, although the Navy contends that it was apparent to offerors that proposals would not include sufficient information to make an analysis under FAR provision 52.222-46, the Navy’s position is not supported by the record. Worksheet L-2 required offerors to provide the Navy the means to calculate both the offeror’s direct labor rate--what the offeror will pay an employee--and expressly required it to provide fringe benefit rate(s)--the cost of the employee’s benefits relative to their wages. We therefore conclude that the RFP provided that the Navy would evaluate professional compensation consistent with FAR provision 52.222-46, and that the RFP also required offerors to provide at least some minimal amount of information necessary for the Navy to perform an evaluation.

⁴ Although our Office indicated that dismissal of this ground of protest as untimely appeared appropriate, we indicated that view was not a final decision, and the parties could raise additional arguments pending resolution of the protest in the decision. Notice of GAO Ruling on Partial Dismissal Request at 2.

We have explained that the purpose of FAR provision 52.222-46 (titled Evaluation of Compensation for Professional Employees), is to evaluate whether an offeror will obtain and keep the quality of professional services needed for adequate contract performance, and to evaluate whether it understands the nature of the work to be performed. In the context of a contract where labor is priced by fixed hourly rates, our Office has noted that this FAR provision anticipates an evaluation of whether the offeror understands the contract's requirements and has offered a compensation plan appropriate for those requirements, which requires assessing the offeror's proposed professional compensation. The depth of the analysis is a matter of the procuring agency's judgment, and so, in reviewing a protest challenging the evaluation, we will assess whether the agency's evaluation was reasonable and consistent with the solicitation. *Criterion Sys., Inc.*, B-419749 *et al.*, July 21, 2021, 2021 CPD ¶ 261 at 6-7.

Here, the Navy failed to assess the information provided in the offerors' proposals regarding professional compensation; it made no assessment of the realism of either offeror's professional compensation or whether it was lower than the incumbent's compensation of professionals. Indeed, the agency emphatically asserts that there was "no doubt that the Navy would not obtain the information needed to evaluate the proposals in accordance with FAR 52.222-46 and would not in fact conduct the evaluation." See Navy Req. for Dismissal at 8. In response to a question posed by Owl during its debriefing, the Navy stated that "The capability to recruit and/or retain personnel at proposed scheduled labor rates was not a specific requirement under Factor 3.0 [the cost/price factor] and was therefore not evaluated for Volume II [the cost/price proposal]." Protest exhs. 21-30, exh. 27, Responses to Owl Debriefing Questions at 73 (Answer No. 12).⁵

The RFP included FAR provision 52.222-46, which provided that the agency would assess professional compensation. The RFP required offerors to provide sufficient information for the Navy to assess, at a minimum, the offeror's direct rates and fringe benefit rates. Because the Navy failed to perform the analysis required by FAR provision 52.222-46, we sustain this ground of protest.

Technical Evaluation Challenges

Turning to the remaining allegations, Owl raises many challenges to the evaluation of both firms' proposals. Owl argues that the technical evaluation was unreasonable in multiple respects within each element. Broadly, Owl contends that the Navy failed to reasonably consider significant differences in the proposed approaches and the resulting performance risk of both offerors, the agency unreasonably undervalued Owl's retention of most incumbent staff, treated the offerors unequally, and it erroneously evaluated PCCI's experience based, at least in part, on misrepresentations. The

⁵ Since, as noted above, the depth of the evaluation is principally a matter for the agency to determine, the fact that the agency did not request or obtain detailed compensation plans from either offeror does not mitigate the failure to evaluate the information that was submitted.

protester also challenges the past performance evaluation as unreasonable and contends that the cost evaluation failed to assess the risk posed by PCCI's indirect cost rate caps. We have reviewed all of Owl's additional arguments and conclude that none, with the exception of the agency's failure to evaluate professional compensation discussed above, provides a basis to sustain the protest. We discuss only the most significant allegations below.

Under element A, personnel, the protester argues that the Navy unreasonably failed to recognize that Owl's proposed approach provided significant advantages over PCCI's, and that the agency unreasonably discounted those advantages and mischaracterized Owl as having only a slight advantage. Protest at 50-51. The protester contends that its proposal provided significant unique value because it would retain [DELETED] the incumbent key personnel ([DELETED] of 22 positions, of which nearly all made exclusive commitments to Owl) and would also retain [DELETED] of the non-key personnel, while PCCI's proposal did not provide that the firm had commitments to retain most incumbent key personnel. *Id.* at 51-52. Owl argues that the Navy correctly characterized this difference as representing a significant advantage to the agency, but the evaluators then unreasonably discounted that conclusion in the overall assessment under the personnel element. *Id.*; Comments & Supp. Protest at 24-25.

Additionally, Owl argues that the Navy made multiple errors in evaluating PCCI's proposal. For one, the protester contends that the Navy unreasonably minimized the significance of PCCI proposing a program manager who lacked relevant on-site and field experience and who allegedly would not be committed fully to the ESSM program. *Id.* at 25-27. Further, Owl argues that the evaluation of PCCI also overlooked weaknesses that should have been assessed for proposing inexperienced personnel in multiple roles, (principally its [DELETED]). *Id.* at 25-28. More generally, Owl contends that the evaluation of PCCI's proposal under element A failed to adequately consider risks arising from PCCI proposing to change over most key personnel roles (as those incumbents were exclusively committed to Owl) and broadly for proposing personnel who lacked experience. *Id.* at 26-27.

The Navy counters that its evaluation reasonably assessed both firms' proposals under technical element A. The agency argues that it accurately recognized the advantages and weaknesses of both firms' proposals, and that Owl's protest centers on disagreement with the agency's evaluation judgments, principally the agency's judgment about the value of specific aspects which the agency subsequently determined were offset by distinct aspects of PCCI's proposal, and whether Owl's remaining advantage to the agency under the personnel element was more significant than the agency's considered evaluation judgment concluded. Memorandum of Law (MOL) at 3-10. None of these allegations provide a basis to sustain the protest, the Navy argues.

In reviewing a protester's challenges to a technical evaluation, our Office affords discretion to the procuring agency because it is responsible both for defining its needs and assessing the best method for accommodating them. So, in reviewing an agency's evaluation, our Office does not reevaluate the technical proposals, but instead we

examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and with procurement statutes and regulations. *Shearwater Sys. LLC*, B-413573 *et al.*, Nov. 16, 2016, 2016 CPD ¶ 335 at 3. Where an agency's evaluation judgment is reasonable, a protester's disagreement with that judgment is insufficient to provide a basis to sustain the protest. *XLA Assocs., Inc.*, B-412333.2, Jan. 29, 2016, 2016 CPD ¶ 54 at 6. Also, where a protester contends that the record shows unequal evaluation treatment, the protester must show that the difference in the evaluation did not result from differences in the offerors' proposals that support the differing evaluation judgments. *A&T Sys., Inc.*, B-410767, Feb. 10, 2015, 2015 CPD ¶ 95 at 3.

The record confirms the reasonableness of the Navy's evaluation of both proposals under element A, personnel. In particular, the evaluation recognized and assigned a significant strength to Owl's proposal regarding the retention of incumbent key personnel and most incumbent non-key personnel. But the agency also found acceptable PCCI's approach which provided committed candidates for all key personnel positions, even if most were not the incumbents in their positions. The protester and the agency differ in their views of Owl's overall advantage under element A, which the agency valued less than the protester contends it should have. That judgment is a matter of agency discretion and, on the record here, there is no basis for our Office to conclude that the Navy's judgment that the value to the Navy of Owl's advantage under the personnel element was slight, was an unreasonable judgment. See *XLA Assocs., Inc.*, *supra*, at 6.

Next, Owl contends the agency unequally evaluated proposals. And while the record confirms that both firms proposed the same person for lead engineer, the record nevertheless supports the agency's evaluation judgment to assess a weakness to Owl's proposal for the lack of a credentialed professional engineer but not PCCI's. The agency determined that PCCI's proposal should not receive the same weakness because PCCI proposed [DELETED], thereby supplying the missing skills and professional credential and effectively mitigating the agency's concern. Although Owl believes that the mitigation is insignificant because the employee is [DELETED], the record is clear that PCCI, unlike Owl, expressly offered to have a [DELETED]. Accordingly, our review supports the reasonableness of the agency's evaluation judgment in this regard and does not demonstrate unequal treatment; rather, the firms' proposed different approaches support the reasonableness of the evaluation of each, even though the same lead engineer was proposed by both and did not possess a professional engineer credential for either offeror.

With respect to Owl's challenges to whether PCCI's proposed personnel possessed sufficient experience, we again conclude that the record supports the reasonableness of the Navy's evaluation. The evaluation considered the qualifications of each of PCCI's candidates for the positions challenged by Owl, compared them to the position requirements in the RFP, and concluded that the candidates were acceptable. For example, the resume for PCCI's program manager showed that the candidate had 35 years of experience supporting the ESSM program that included on-site and field experience, which plainly satisfied the RFP's qualifications requirement. *Compare AR*,

Tab 2a, RFP attach. J-2, at 8 (requiring the program manager to have 15 years of experience in “management of [g]overnment contract activities”) *with* AR, Tab 8a, PCCI Tech. Proposal at 30 (listing proposed program manager experience as including over 30 years of qualifying experience supporting the ESSM program). Ultimately, Owl’s protest fails to show that the Navy’s evaluation judgments in identifying and determining the significance of weaknesses in PCCI’s personnel under element A was unreasonable.

Under element B, management, Owl argues that the Navy unreasonably evaluated PCCI’s approach as superior to Owl’s, both as to their transition plans and their training plans. The firm challenges a weakness the Navy assessed for the firm’s transition plan under technical element B, which was based on language in Owl’s proposal indicating that its approach included transition functions being performed [DELETED]. Protest at 7. Owl argues that the evaluation misinterpreted that aspect of its approach as requiring staff to perform transition duties [DELETED]. *Id.* The firm argues that its proposal only proposed to have a limited set of key personnel “provide limited on-site support, as necessary” to supplement a dedicated transition staff. *Id.* at 36. Additionally, rather than assessing a weakness, the approach instead should have been recognized as providing value through the retention of knowledgeable incumbent personnel. *Id.*⁶

⁶ Owl also argues that the Navy conducted misleading discussions by identifying concerns with the risks and lack of mitigation in its approach to transition. Owl maintains that it was misled to emphasize the lack of transition risks rather than address the agency’s concern that its approach posed a risk by overburdening its staff with [DELETED] transition duties. Owl maintains that the discussions also misled it by not directing its response to focus on providing specificity about its transition. Protest at 7, 39; Comments & Supp. Protest at 15-16. To be meaningful, discussions must be sufficiently detailed to lead an offeror to the areas of its proposal requiring amplification or revision. *Partnership for Supply Chain Mgmt.*, B-411490, B-411490.2, Aug. 11, 2015, 2015 CPD ¶ 252 at 5.

Owl fails to show that the agency’s discussion inquiry was misleading; rather, the record shows that the agency identified a concern that the approach did not adequately identify transition risks and did not explain how areas of risk would be mitigated. Indeed, the agency’s discussion communication quoted from Owl’s proposal regarding the involvement of [DELETED] in transition, and then expressed the concern that the approach did not give the evaluators confidence that the firm had properly analyzed the transition process from the incumbent joint venture to Owl itself being the contractor. AR, Tab 3, Navy Discussions to Owl at 1-2. Contrary to Owl’s arguments, the discussions thus reasonably led Owl to the area of the agency’s evaluated concern about the source of risk in its transition approach and the firm’s apparent failure to appreciate and mitigate the risk. While Owl’s final proposal revision failed to allay the concerns raised by the agency, that outcome does not demonstrate a flaw in the agency’s discussions.

Owl also argues that the Navy miscalculated PCCI's proposal by failing to assess weaknesses because PCCI did not propose incumbent key personnel, and therefore its transition would necessarily involve significant risk. Owl contends this was confirmed after award when PCCI sought information about personnel, benefits, and ongoing orders that allegedly show the firm lacked a feasible approach to transition. Protest at 7, 41-42.

Owl also challenges a weakness assessed against its proposal for its proposed training plan. Specifically, the agency identified a weakness with Owl's proposal to provide underwater ship husbandry (UWSH)⁷ training. The agency concluded that Owl's plan reflected an overreliance on conducting training during [DELETED]. The Navy deemed reliance on [DELETED] for training problematic because their scheduling was uncertain and, [DELETED]. Owl counters that its UWSH training was multifaceted, and only one element was to send personnel to "receive regular training during [DELETED]." Additionally, Owl contends that its plan provided that personnel would only be assigned to [DELETED] if they had other duties to perform. Protest at 43-45.

The Navy argues that the evaluation under element B was reasonable and consistent with the evaluation criteria. With respect to the firms' respective transition approaches, the agency argues that, contrary to Owl's description of its transition approach as seamless and low risk, its proposal was reasonably assessed a weakness because the firm failed to appreciate and address the risk in transitioning from performance by the incumbent joint venture to Owl itself, notably including the approach of having [DELETED].⁸ MOL at 12-15. In contrast, the agency argues, PCCI's approach to transition was detailed and insightful, and the evaluation explained in detail why the firm's approach provided confidence in the firm's ability to accomplish a smooth and seamless transition, and thus merited a strength. *Id.* at 16; AR, Tab 4, SSEB Report at 15. The agency argues that PCCI's efforts to obtain information from Owl after award, as an effort to facilitate the transition, do not support the protester's claim that PCCI's proposed transition plan (or, for that matter, its approach to recruiting and retaining personnel) was defective. MOL at 30. In addition, the agency asserts that those events are matters of contract administration rather than evidence of a flaw in the evaluation of PCCI's transition plan under technical element B. *Id.*

⁷ In brief, UWSH involves performing ship maintenance or repair underwater. The contract requires the contractor to maintain prepositioned equipment that is needed to perform UWSH tasks, so the contractor personnel who maintain that equipment and support it when deployed must receive training to ensure their skills are current.

⁸ Owl argues that any legitimate concern about its plan to transition duties [DELETED] was mitigated by proposing the possibility of obtaining an agreement from the incumbent joint venture for the key personnel to perform transition duties [DELETED]. We see no error in the Navy's decision not to give this alternative any weight because it was merely hypothetical.

With respect to Owl's UWSH training plan, the Navy argues that the evaluation reasonably assessed Owl's approach and determined that using [DELETED] opportunities as an element of the approach represented overreliance on an approach that was uncertain and inconsistent. AR, Tab 4, SSEB Report at 27. To the extent Owl argues that the agency focused unreasonably on one element of its UWSH techniques, the agency counters that the proposal identified training during [DELETED] as significant, stating that the firm's "UWSH mechanics receive regular training [DELETED] to qualify and stay proficient on all ESSM UWSH equipment and tools." AR, Tab 9a, Owl Tech. Proposal at 85 (proposal page No. I-64). At the same time, the evaluators found that Owl's proposal did not provide detail about the significance and scope of the other training elements, making only brief mention of [DELETED], and thus the evaluators' assessment of a weakness was reasonable. MOL at 20.

Our review of the record supports the Navy's evaluation of both weaknesses. Accordingly, we deny Owl's challenges to the evaluation under element B.⁹ As described above, the agency identified a reasonable concern about the increased risk resulting from Owl's proposed transition approach, which included key personnel [DELETED]. See AR, Tab 9a, Owl Tech. Proposal at 117 (proposal page No. I-96, stating "[w]e understand that during the transition period [DELETED]"). Although Owl argues that the risk was minimal and manageable, the record supports the reasonableness of the Navy's evaluation of that element of the approach as a weakness. The record also shows that the Navy reasonably found PCCI's transition approach had merit even though it did not include most of the incumbent key personnel including PCCI's identification of transition risks and mitigation strategies.

Similarly, the record supports the Navy's assessment of a weakness to Owl for its UWSH training approach. The evaluators reasonably understood Owl's approach as identifying an essential element of its UWSH training as occurring [DELETED]. See AR, Tab 9a, Owl Tech. Proposal at 86-87 (proposal page Nos. I-65 to I-66, explaining importance of [DELETED] experience for mechanics, identifying specific equipment training as "[DELETED]," and that salvage-specific training "will typically [DELETED]"). The agency also reasonably viewed reliance presented a risk first because [DELETED] did not always take place when planned, and second because it could promote inefficient expenditure of time and expense to [DELETED]. Accordingly, we deny Owl's challenges to the evaluation under technical element B.

⁹ In addition to challenging its own evaluation, Owl also argues that PCCI's approach to UWSH should have been evaluated as inadequate and lacking detail but was instead unreasonably assessed as a strength. Comments & Supp. Protest at 14. The Navy refutes Owl's challenge, noting that the evaluators credited PCCI for proposing to provide training [DELETED], and would provide the training [DELETED], all of which the evaluators viewed as valuable. MOL at 33. Even if PCCI's UWSH approach was not described in detail, the record supports the reasonableness of the assessment of a significant strength for PCCI's UWSH training.

Next, Owl challenges the evaluation under both element C, technical capability and experience, and factor 2, past performance. Owl contends that the evaluation under both criteria unreasonably found that both firms had the same experience in performing ESSM as a result of their roles in the incumbent joint venture, despite Owl's assertion that it was both the majority owner of the joint venture and performed more of the work. Although the element C evaluation concluded that Owl had a slight advantage over PCCI, Owl argues that its own role in the incumbent joint venture was much more significant than PCCI's and should have been considered significantly superior. The protester alleges that PCCI did not perform many SOW requirements (such as training, management, and specialty system procurement) and, consequently, the evaluation should have recognized a significant advantage for Owl over PCCI. Protest at 65. The protester also asserts that the Navy should have known that PCCI's claims of broad experience and past performance under the incumbent contract were inaccurate, and that the evaluation was improper because it was based on alleged misrepresentations by PCCI. Protest at 61-64; Comments & Supp. Protest at 32-36.

The Navy argues that the evaluation of experience and capability under technical element C, and the evaluation of past performance, were both reasonable. The Navy maintains that regardless of Owl's role in the joint venture, PCCI's proposal adequately demonstrated the firm's possession of the range of experience in ESSM requirements and related areas. MOL at 40-42. The agency notes that PCCI has been involved in the incumbent joint venture for more than 30 years. Additionally, the agency notes that in at least one area where PCCI lacked experience and past performance on the ESSM contract, it demonstrated that experience and past performance on a non-ESSM contract. *Id.* at 43. The agency contends that it reasonably concluded that both firms demonstrated the required capability and experience and relevant past performance, and concluded that both firms' evaluations had similar merit, and Owl's advantage under the experience element was slight.

In response to Owl's contention that PCCI misrepresented its role in the incumbent contract and thus misled the Navy with respect to the firm's experience and past performance, PCCI directly disputes each of the alleged misrepresentations. PCCI's president avers that the firm participates actively in management through two members of the joint venture's five-member board, and its executive filled the roles of chief operating officer (and two subordinates) until 2021, contrary to Owl's claim that the awardee has had little involvement in management. Intervenor's Supp. Comments at 21; exh. A, Decl. of PCCI President at 1. Further, the awardee explains that its personnel often interact directly with the Navy during performance of the incumbent contract. *Id.* The firm also challenges the contention that PCCI's proposed program manager has had little on-site experience during performance of the incumbent contract, supporting its claim with multiple examples by the candidate of both on-site performance and service as the primary point of contact for specific projects. *Id.*; exh. B, Decl. of PCCI Chief Exec. Officer at 6-8.

In a protest challenging the evaluation of experience or past performance, our Office considers the evaluation to be generally committed to the discretion of the contracting agency, so we will not substitute our judgment for reasonably based past performance

ratings. We will review the record to determine whether the agency conducted the evaluation fairly, reasonably, and in accordance with the solicitation's evaluation scheme, and whether it was based on relevant information sufficient to make a reasonable assessment of the offeror's experience and record of performance. *Fidelity Decypher Servs., LLC*, B-418542.2; B-418542.3, Aug. 26, 2021, 2021 CPD ¶ 309 at 6; *Human Resource Sys., Inc.; Health Staffers, Inc.*, B-262254.3 *et al.*, Dec. 21, 1995, 96-1 CPD ¶ 35 at 4.

We see no basis to find unreasonable the evaluative weight the agency assessed for experience and past performance between the joint venture members that Owl contends was required. To the contrary, PCCI explains that our Office has recognized experience and past performance gained by a joint venture can properly be credited to a member of the joint venture that is involved in the performance. Intervenor's Supp. Comments at 3 (citing *Diversified Tech. & Servs. of Virginia, Inc.*, B-412090.2, B-412090.3, Dec. 16, 2015, 2016 CPD ¶ 34 at 9 and *Battelle Mem'l Inst.*, B-278673, Feb. 27, 1998, 98-1 CPD ¶ 107 at 22). While Owl contends that the evaluation had to consider its own experience superior because of its slightly greater ownership of the joint venture (51 percent versus 49 percent) and allegedly more comprehensive involvement in performance, the agency reasonably evaluated both and, although there were differences, the agency reasonably concluded that the difference did not distinguish one above the other under either technical element C or the past performance factor. Nor does the record provide a basis to conclude that PCCI misrepresented its experience or past performance under the incumbent contract given the firm's direct and detailed rebuttal of the protester's allegation of misrepresentations. Owl has provided no basis to sustain its challenges to those evaluations.

Under element D, Owl argues that the Navy misevaluated the firm's sample problem response. The sample problem required each offeror to provide a response to a scenario in which a collision between a Navy ship and a barge that caused damage and evidence of leaking hydraulic fluid and heavy black oil into the water. AR, Tab 2f, Sample Problem at 1. The instructions included two tentative equipment lists, and directed offerors to prepare a plan to respond, that should include "any recommendations [the offeror] would make to equipment lists and/or mobilization strategies with justifications for those recommendations. *Id.* at 2.

Owl argues that its approach was derived from the extensive experience of its incumbent key personnel and should not have been assessed a weakness for a discrepancy. Protest at 55. The firm argues that its sample problem response included the tentative equipment list that the agency had supplied in a requisition and invoice/shipping document (known as DD1149), but also listed additional equipment items separately. *Id.* at 56. The Navy assessed weaknesses because of discrepancies in the documentation of equipment Owl proposed to utilize, and in the timing of its equipment shipments. AR, Tab 4, SSEB Report at 33. The firm argues that the assessment of weaknesses was based on an unreasonable interpretation of Owl's sample problem response.

The Navy argues that the sample problem evaluation was reasonable. The agency notes that the sample problem was timed and was intended to assess the offeror's ability to evaluate an emergent situation and prepare a clear plan to respond. The discrepancy between the equipment lists showed discrepancies over the need for a specific piece of equipment (a stern tube cofferdam) and the firm listed different shipping timelines for needed equipment. Compare AR, Tab 10, Owl Sample Problem Response at 14-17 with 19 (required equipment documentation), 22 with 24 (equipment arrival timing); MOL at 44-45. The agency explains that if the sample problem had been a real-world event, the discrepancies could interfere with efficient response to the situation and could result in a needed piece of equipment failing to ship to the incident on time. The issue reasonably resulted in assessment of a weakness, the agency contends. *Id.* at 45.

Based on our review of the record, the agency's technical evaluation of Owl's sample problem response was reasonable. The RFP provided that the sample problem response would be evaluated to assess the offeror's response in a problem-solving exercise, whether the offeror understood and would respond to the requirements of the scenario. It advised offerors to provide comprehensive responses that address the full extent of support and field operations as if it were a real-world event. AR, Tab 2, RFP at 80. By providing equipment documentation and shipping timelines that were inconsistent, Owl's sample problem response was reasonably assessed a weakness. In sum, we deny all of Owl's technical factor evaluation challenges.

Other Cost/Price Evaluation Challenges

Under the cost/price factor, apart from the challenge to the Navy's failure to properly evaluate professional compensation under FAR provision 52.222-46 discussed above, Owl also argues that the Navy improperly failed to consider the risk posed by PCCI's proposal of low indirect cost rates and further, a proposed ceiling, or cap, on its indirect cost rate. The firm argues that PCCI's approach involves establishment of [DELETED] for cost purposes, and that the available data of audited rates for PCCI's [DELETED] calculated [DELETED] indirect rates than the firm proposed. Those circumstances indicate a significant risk, it contends, because by [DELETED], PCCI will be unable to recover its cost of performance under the ESSM contract. As a result, Owl argues that performance of the contract at PCCI's proposed costs will place the firm in financial distress and will incentivize the firm to minimize its efforts on the contract to limit its losses. Owl argues that the Navy improperly failed to consider these risks in evaluating PCCI's cost proposal.

The Navy argues that its evaluation of both firms' costs proposals was consistent with the evaluation criteria in the RFP. The agency acknowledges that the RFP provided that the cost evaluation would include a cost realism assessment for offeror's indirect rates. However, it encouraged offerors to propose indirect rate ceilings and further explained their treatment as follows:

Evaluation of Indirect Rates and Ceilings

If the Offeror does not propose a ceiling for the indirect rates, a cost-realism evaluation will be performed by the Government on the proposed indirect rates to calculate the probable cost impacts that would be incurred in the course of performance. If proposed indirect rates are considered to be unrealistic, the Offeror's proposed rates will be adjusted upward to determine the Government evaluated indirect rate. No downward adjustment will be made to an Offeror's rates during the cost realism analysis.

If the Offeror proposes a ceiling for any indirect rates, the evaluated rate(s) will be equal to the proposed ceiling rate as this ceiling rate represents the maximum cost risk to the Government and is therefore considered realistic.

RFP at 113 (§ M, 2.3.1.2).

The Navy argues that since both offerors proposed caps on all indirect costs, the Navy properly calculated each firm's costs by using the capped rates and deeming the firm's capped rates to be realistic. The Navy maintains that the evaluation was consistent with the RFP, and that the evaluation of risk from PCCI's allegedly low indirect rates and ceilings, that Owl argues for, was not required under the terms of the RFP.

As a general principle, the FAR provides that when evaluating offerors' costs for a cost-reimbursement contract, the agency must assess the realism of the offeror's proposed costs; that is, a cost realism analysis. FAR 15.404-1. The requirement to assess cost realism is to recognize that the offeror's proposed costs are not dispositive in a cost-reimbursement environment; that is, even if the offeror proposes that its costs will be low, the government generally will be liable to the contractor for all allowable and allocable costs incurred in connection with the performance of the contract. *Vectrus Mission Sols. Corp.; Vanquish Worldwide, LLC, B-418942 et al.*, Oct. 27, 2020, 2021 CPD ¶ 87 at 5. The analysis involves

independently reviewing and evaluating specific elements of each offeror's proposed cost estimate to determine whether the estimated proposed cost elements are realistic for the work to be performed; reflect a clear understanding of the requirements; and are consistent with the unique methods of performance and materials described in the offeror's technical proposal.

FAR 15.404-1(d)(1).

Here, the record does not show a basis to sustain Owl's challenges to the evaluation of PCCI's costs, even if its proposal included indirect cost caps that turn out to be far below the costs that PCCI will actually incur during performance. While a cost realism

analysis may provide a basis to consider the risk posed by an offeror proposing cost caps that could create incentives for minimal or poor performance, the RFP here expressly provided that the Navy would consider proposed indirect cost caps to be realistic, hence, without regard to the cap level or the potential effects, such as an offeror's potential financial losses or distorted performance incentives. Accordingly, the agency's treatment of PCCI's capped indirect rates as realistic (and likewise for Owl¹⁰) was consistent with the RFP. Accordingly, we deny the protester's challenges to the evaluation under the cost/price factor.

Tradeoff

Finally, although Owl challenges the reasonableness of the Navy's tradeoff and selection of PCCI's proposal, we do not reach the merits of these challenges because we conclude that without properly evaluating the offerors' professional compensation as the RFP provided, the Navy could not reasonably select PCCI's proposal as the best value. Accordingly, we sustain the challenge to the agency's tradeoff.

RECOMMENDATION

We recommend that the Navy reevaluate offerors' proposals in accordance with the RFP, and in particular FAR provision 52.222-46. If the Navy's evaluation reasonably determines that an offeror's professional compensation is unrealistically low, the Navy should consider whether the circumstances justify rejecting the proposal, pursuant to FAR provision 52.222-46(d). The Navy may consider reopening discussions if the Navy determines that obtaining more information would be in the agency's interest. We further recommend that the Navy make a new source selection determination and, if PCCI is not selected for award, we recommend that the agency terminate the award to PCCI for the convenience of the government and make a new award, if otherwise proper. Finally, we recommend that the agency reimburse Owl's costs associated with filing and pursuing these protests, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). Owl should submit its certified claim for costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days after the receipt of this decision.

The protest is sustained in part and denied in part.

Edda Emmanuelli Perez
General Counsel

¹⁰ Owl notes that the Navy assessed the realism of Owl's proposal of a **[DELETED]** percent overhead rate for certain costs. Comments & Supp. Protest at 39. However, as Owl also acknowledges, the Navy determined that Owl's approach was proper, so the firm was not prejudiced by that allegedly improper realism assessment.