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Decision

Matter of: DirectViz Solutions, LLC

File: B-423366; B-423366.3; B-423366.4

Date: June 11, 2025

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DIGEST

1. Protest that awardee has disqualifying organizational conflicts of interest is sustained where the record shows that the agency unreasonably concluded there was no possibility of a potential conflict arising from the awardee's performance of a related task order.
 2. Protest challenging agency's evaluation of proposals is denied where the record shows that the evaluation was reasonable, consistent with the stated evaluation criteria, and adequately documented.
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DECISION

DirectViz Solutions, LLC, of Vienna, Virginia, protests the issuance of an order to Peraton, Inc., of Herndon, Virginia, under task order proposal request (TOPR) No. W91RUS-24-R-GCCC, issued by the Department of the Army for information technology support services for the Army's Global Cyber Center (GCC). The protester challenges various aspects of the agency's evaluation of proposals and award decision, including the agency's evaluation of Peraton's organizational conflicts of interest (OCIs).

We sustain the protest.

BACKGROUND

The Army issued the solicitation on October 25, 2024, seeking proposals to provide cybersecurity information technology support services for the Army's GCC. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 7; Agency Report (AR), Tab 25, TOPR at 1; AR, Tab 22, Performance Work Statement (PWS) at 2.¹ The solicitation was issued, using the procedures of Federal Acquisition Regulation (FAR) subpart 16.5, to firms holding the Army's Computer Hardware Enterprise and Solutions Information Technology Enterprise Solutions-Services (CHESS-ITESS) multiple-award, indefinite-delivery, indefinite-quantity (IDIQ) contract. TOPR at 1, 4. The solicitation anticipated issuance of a cost-plus-fixed-fee and level-of-effort task order with a 1-month phase-in period, an 11-month base period of performance, three 1-year option periods, and one additional 6-month option. *Id.* at 2.

The task order's scope of work encompassed "operations and maintenance [] functions, as well as integration of emerging and directed technology adoption" for the Network Enterprise Technology Command (NETCOM), as well as "common service support, capability management support, enterprise services support, operational support, secure operations support, and sustainment services support." AR, Tab 22, PWS at 2. As relevant here, GCC was previously known as the Regional Cyber Center-Continental United States (RCC-CONUS), one of five Regional Cyber Centers (RCCs) under NETCOM.² Protest at 1-2; COS/MOL at 3-4. The solicitation advised that "[t]here is a possibility that this follow-on requirement for GCC will not exercise all of the options and will merge into a separate competed acquisition for a global, consolidated contract/task order for support across all [RCCs]." TOPR at 1. In this regard, the solicitation further specified that "potential, anticipated mission changes over the life of the contract include transitioning [RCC-CONUS] from a[n] RCC to a [GCC] that helps support better coordination of digital operations across the world." TOPR at 1. The agency states that the purpose of the task order is to build a new GCC that will "ultimately replace and subsume the work of the standalone RCCs." COS/MOL at 3.

The solicitation advised that award would be made to the offeror whose proposal represented the best value after a tradeoff considering the following five factors: (1) demonstrated prior experience; (2) key personnel resumes; (3) oral presentation; (4) betterment; and (5) cost/price. TOPR at 18-20. For the tradeoff, all non-cost/price factors were of relatively equal importance, while the non-cost/price factors, taken together, were significantly more important than cost/price. *Id.* at 18. For the evaluation of the first three factors, the solicitation provided that the agency would assign

¹ The solicitation was amended four times. Unless otherwise noted, citations to the solicitation are to the final amended version of the TOPR provided in tab 25 of the agency report. Citations to agency report documents are to the internal page numbers marked in the documents; for documents without consecutive page numbers, we cite to the Adobe PDF page numbers.

² DirectViz was the incumbent contractor for the predecessor task order for cybersecurity information technology support services at the RCC-CONUS.

confidence ratings (high confidence, some confidence, or low confidence), reflecting the agency's level of confidence that the offeror "understands the requirement, proposes a sound approach, and will be successful in performing the contract." *Id.* at 20. The solicitation also informed offerors that proposals rated as either low or some confidence for any of the first three factors would not be considered for award. *Id.* at 18.

The solicitation provided for a two-phased evaluation. *Id.* at 3, 6-18. Under phase I, offerors were to submit proposals for the demonstrated prior experience factor and the key personnel resumes factor. *Id.* at 10-11. For demonstrated prior experience, offerors were required to provide "up to three contracts/orders" performed within the past seven years to demonstrate experience applicable to the PWS for this requirement, specifically "PWS 3.0 Technical Requirements through 3.6.1.14.2." *Id.* at 10. The TOPR informed offerors that referenced contracts "should be the Offeror's own experience as a prime or subcontractor" and that "experience from a proposed subcontractor should not be submitted." *Id.* A detailed narrative was required to describe "how the company's experience for these contracts/orders in supporting similar efforts in size (approximately 300 [full-time equivalents] supporting 550,000 customers), complexity, and scope supporting Federal Government organizations is like this requirement." *Id.* The solicitation advised that the agency would evaluate offerors' submissions under the experience factor by assessing the government's level of confidence that the offeror would successfully perform the requirements. *Id.* at 20.

For the key personnel factor, the solicitation required offerors to provide resumes for seven key positions identified in the solicitation that "clearly demonstrate how each of the proposed Key Personnel meets the requirements for appropriate experience, certifications, and qualifications." *Id.* at 10-11. The agency would assess its level of confidence that the offeror had identified and committed key personnel with appropriate experience, certifications, and qualifications based on, among other things, the "Table 2 Expert-Level Position Requirements and Table 3 Key Technical Personnel Certifications" provided in the PWS. *Id.* at 20.

Only those offerors whose phase I proposals were assigned a rating of high confidence for both the experience and key personnel factors would be invited to submit phase II proposals. *Id.* at 11. Under phase II, offerors were to submit their betterment and cost/price proposals, and provide oral presentations. *Id.* at 11-18.

Under the betterment factor, the solicitation required offerors to propose any "betterments," defined as "any instance where the proposed solution exceeds the Government's requirement in a way that is meaningful for the Government." *Id.* at 16, 20. Offerors were instructed to "provide information explaining the promise of the betterment and the betterment's value to the Government." *Id.* at 16. The agency would then evaluate "the value to the Government of any betterments that are promised in the solution for transitioning from a [RCC] to a [GCC] that can help better coordinate cyber space operations across the world and all five of the RCCs." *Id.* at 20.

For oral presentations, offerors were required to “provide an oral presentation based on the questions and problem statements received in person two hours before the oral presentation.” *Id.* at 16. Offerors were further informed that they should be “prepared to discuss their solutions . . . for Technical Approach and Staffing” to fulfill the government’s requirement. *Id.* As relevant here, the solicitation also stated that oral presentations “may or may not be recorded by the Government.” *Id.* In addition, the solicitation noted that oral presentations were intended to be “an interactive exchange between the Offeror and the Government” and that these exchanges would be “viewed as a component of the oral presentation itself and do not constitute discussions.” *Id.* at 17. The agency would “not ask questions that will invite or allow the Offeror to change its Proposal” and warned offerors to “not volunteer any information that might be construed as changing its Proposal.” *Id.* Oral presentations would be evaluated by assessing the government’s level of confidence that the offeror would successfully perform all requirements “based on the answers provided to the questions provided the day of the oral presentation, and any exchanges that occur within the oral presentation.” *Id.* at 20. If an offeror did not receive a rating of high confidence for its oral presentation, the offeror would not be considered for award. *Id.* at 18.

Seven offerors, including DirectViz and Peraton, submitted phase I proposals. COS/MOL at 20. After completing initial evaluations of the phase I proposals, the agency conducted interchanges with all offerors under FAR section 16.505 by issuing evaluation notices and providing an opportunity for offerors to update their phase I submissions. *Id.* at 21; AR, Tab 52, Decision for Interchanges at 1-2. After evaluating the updated phase I proposals, the agency invited five offerors, including DirectViz and Peraton, to proceed to phase II evaluations; all five offerors submitted phase II proposals and participated in oral presentations. COS/MOL at 23; AR, Tab 65, Task Order Decision Document (TODD) at 13.

As relevant here, the agency decided not to record the oral presentations, but each member of the technical proposal evaluation board (PEB) took contemporaneous notes. COS/MOL at 23; see AR, Tabs 70a, 70b, 70c, Evaluators’ Oral Presentation Notes. Following the oral presentations, the PEB members conducted a panel discussion to establish consensus ratings for the offerors’ oral presentations. COS/MOL at 23; AR, Tab 64, Oral Presentation Final Evaluation Report at 1.

Following the evaluation of phase II proposal submissions, the proposals of DirectViz and Peraton were assigned the following final ratings:

| | DirectViz | Peraton |
|-------------------------------|-----------------|-----------------|
| Demonstrated Prior Experience | High Confidence | High Confidence |
| Key Personnel Resumes | High Confidence | High Confidence |
| Oral Presentation | High Confidence | High Confidence |
| Betterments | 1 | 1 |
| Total Evaluated Cost/Price | \$225,833,063 | \$225,089,343 |

AR, Tab 65, TODD at 35.

The contracting officer, who was also the source selection authority (SSA), reviewed the PEB's technical evaluation reports and concurred with its findings. *Id.* at 1, 12. The SSA then conducted a tradeoff analysis of offerors' proposals under each technical factor and selected Peraton's proposal for award, finding that DirectViz's proposal was "not sufficiently more advantageous to the Government to warrant paying" the price premium of \$743,719. *Id.* at 39-40. The SSA noted that, while the two offerors were assigned the same ratings of high confidence under each of the first three non-cost/price factors, with one betterment each, Peraton's proposal provided a better value. *Id.* at 40. Specifically, the SSA found that Peraton demonstrated prior experience on contracts with "a larger size, complexity, and scope" and its proposed betterment of automated workflows increased the agency's confidence that Peraton would provide "exceptional value" for transitioning the RCC for the continental United States into a GCC. *Id.* Based on these findings, the Army selected Peraton for issuance of the task order. *Id.*

The Army provided a debriefing to DirectViz, and this protest followed.³

DISCUSSION

DirectViz raises numerous challenges to the agency's evaluation and award decision. First, the protester contends that Peraton is precluded from award because of unmitigated OCIs. The protester also asserts that the agency unreasonably evaluated proposals under each evaluation factor and failed to sufficiently document offerors' oral presentations. Finally, the protester argues that the agency's best-value tradeoff decision was flawed.

As detailed below, we find that the agency's OCI analysis of Peraton was unreasonable and sustain the protest on that basis. We have also considered all of the remaining issues raised by DirectViz and, while we do not discuss every argument, we find no additional basis on which to sustain the protest.⁴

Organizational Conflict of Interest

DirectViz contends that the agency failed to meaningfully consider and sufficiently investigate unmitigated OCIs arising from Peraton's performance under a separate task

³ The awarded value of the task order at issue exceeds \$35 million. Accordingly, this protest is within our Office's jurisdiction to resolve protests in connection with 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).

⁴ In addition, we do not discuss here the protester's challenges to the agency's best-value tradeoff analysis, which are rendered academic in light of our decision sustaining the challenge to the agency's evaluation of the awardee's OCI.

order supporting the Army Cyber Command (ARCYBER).⁵ Protest at 26-32; Comments & 2nd Supp. Protest at 46-73. The protester argues that Peraton improperly failed to disclose these conflicts, and that the agency failed to reasonably investigate them. *Id.* As discussed below, based on our review of the record, we find that the agency failed to adequately consider an impaired objectivity OCI arising from Peraton's work under the ARCYBER task order.

The FAR requires contracting officials to identify and evaluate organization conflicts of interests as early as possible, and to avoid, neutralize, or mitigate significant potential conflicts so as to prevent an unfair competitive advantage or the existence of conflicting roles that might impair a contractor's objectivity. FAR 9.504(a), 9.505. The identification of conflicts of interest is a fact-specific inquiry that requires the exercise of considerable discretion. *MANDEX, Inc.*, B-421664 *et al.*, Aug. 16, 2023, 2023 CPD ¶ 201 at 5. To successfully allege a conflict of interest, a protester must identify hard facts that indicate the existence or potential existence of a conflict; mere inference or suspicion of an actual or potential conflict is not enough. *AAR Mfg. Inc., d/b/a AAR Mobility Sys.*, B-418339, Mar. 17, 2020, 2020 CPD ¶ 106 at 5. Our Office reviews OCI investigations for reasonableness, and where an agency has given meaningful consideration to whether a significant conflict of interest exists, we will not substitute our judgment for the agency's absent clear evidence that the agency's conclusion is unreasonable. *Inquiries, Inc.*, B-417415.2, Dec. 30, 2019, 2020 CPD ¶ 54 at 6.

Additional Background

As noted above, the awardee will be required to provide cybersecurity information technology support services for the GCC. The scope of the work, as described in the PWS, encompasses "operation and maintenance [] functions, as well as [the] integration of emerging and directed technology adoption, . . . common service support, capability management support, enterprise services support, operational support, secure operations support, and sustainment services support." AR, Tab 22, PWS at 2. The wide range of technical support envisioned also includes capability management support for NETCOM and enterprise services division to provide secure operations for the enterprise network infrastructure. *Id.* at 3-9.

On December 7, 2023, Peraton was awarded a separate Army task order, under the General Services Administration's (GSA) One Acquisition Solution for Integrated

⁵ The protester also alleged that the agency failed to consider OCIs arising from Peraton's performance on the predecessor task order to the current ARCYBER task order. Comments & 2nd Supp. Protest at 73-74. After reviewing the supplemental agency report, the protester withdrew its allegation of an impaired objectivity OCI based on this predecessor task order but maintained that Peraton had biased ground rules and unequal access to information OCIs. Supp. Comments at 38 n.9. For the same reasons discussed herein with respect to the allegations of biased ground rules and unequal access OCIs arising from the ARCYBER task order, we find no merit to these OCI assertions arising from the predecessor task order.

Services (OASIS) multiple-award IDIQ contract, to “provide cyberspace operations support services for ARCYBER Headquarters[], ARCYBER subordinate components, service component partners of USCYBERCOM, and other cyber mission partners.” AR, Tab 71u, ARCYBER Task Order at 1, 8. The expansive requirements under the ARCYBER task order include the provision of: overarching program management support; intelligence support; cyberspace operations support; planning, strategy, policy, and doctrine support; DODIN mission support; readiness, training, and exercises support; and communication and collaboration support. *Id.* at 9-50. Peraton also “provide[s] cyberspace operations support,” not only “for ARCYBER Headquarters,” but also for “ARCYBER subordinate components, service component partners of USCYBERCOM, and other cyber mission partners.” *Id.* at 8.

In explaining the relevant command relationship between ARCYBER and GCC, the GCC task order PWS explains that ARCYBER is the “primary Army headquarters responsible for cyberspace operations in support of Army and Joint requirements” and that it serves as the single point of contact “for reporting and assessing Army cyberspace incidents, events, and operations in Army networks, and for synchronizing and integrating Army responses thereto.” AR, Tab 22, PWS at 2. As a subordinate unit to ARCYBER, NETCOM “plans, engineers, installs, integrates, protects, and operates Army Cyberspace, enabling Mission Command through all phases of Joint, Interagency, Intergovernmental, and Multinational operations.” *Id.* Under NETCOM, the 7th Signal Command is responsible for “delivering seamless, Enterprise-level Army Information Technology Portfolio common-user services and operating, managing, and defending the Enterprise [information technology] infrastructure in support of the” continental U.S. Army. *Id.* GCC is part of the 7th Signal Command. *Id.* The GCC PWS further explains that “ARCYBER plans, coordinates, integrates, synchronizes, directs, and conducts an integrated defense within all Army networks, and as directed, within the DODIN.” *Id.*

As relevant here, the solicitation required offerors to “disclose complete information of any work performed by their company that is in any way associated with the contemplated acquisition or which could result in a potential [OCI].” TOPR at 9. An OCI mitigation plan was only required if the firm identified an actual or potential OCI. *Id.* Peraton’s proposal stated that it was “not currently aware of any facts which create any actual or potential [OCI] relating to this opportunity” and thus did not provide any OCI mitigation plan. AR, Tab 38, Peraton Proposal General Vol. at 5.

Based on DirectViz’s allegations in its initial and second supplemental protests, the contracting officer conducted two rounds of investigations into potential OCIs arising from Peraton’s performance of the ARCYBER task order. COS/MOL at 27; see *generally*, AR, Tab 71, OCI Determination. After reviewing relevant documents—including the PWS of each task order, declarations from the technical lead for the GCC task order and the acquisition chief for the ARCYBER task order, and Peraton’s responses to OCI questionnaires—the contracting officer concluded that no OCIs existed. AR, Tab 71, OCI Determination at 2. DirectViz disputes this conclusion and argues that the agency failed to meaningfully investigate Peraton’s potential OCIs. Comments & 2nd Supp. Protest at 44-73; Supp. Comments at 48-53.

Impaired Objectivity OCI

The protester argues that Peraton has an unmitigated impaired objectivity OCI.⁶ Our Office has explained that an impaired objectivity OCI arises where a firm's ability to render impartial advice to the government would be undermined by the firm's competing interests. FAR 9.505(a); *AT&T Corp.*, B-417107.4, July 2, 2020, 2020 CPD ¶ 283 at 6. Here, the protester asserts that an OCI arises from the broad cyber support that Peraton provides to ARCYBER, including support for the GCC, one of ARCYBER's subordinate components. Protest at 26-30. In this regard, the protester points to specific provisions in the ARCYBER PWS that require Peraton to assist ARCYBER with

⁶ The protester also alleges that Peraton's work on the ARCYBER task order also raises biased ground rules and unequal access to information OCIs. A biased ground rules OCI arises where a firm, as part of its performance of a government contract, has in some sense set the ground rules for the competition for another government contract. FAR 9.505-1, 9.505-2. In these cases, the primary concern is that the firm could skew the competition, whether intentionally or not, in favor of itself. *Systems Made Simple, Inc.*, B-412948.2, July 20, 2016, 2016 CPD ¶ 207 at 6. DirectViz, however, does not provide any support for its argument that Peraton actually participated in any activity that could have shaped or skewed the requirements for the GCC task order in its favor. The protester's inference based on the portions of the ARCYBER PWS that require Peraton's support to develop agency-wide cyber policy and strategy, without more, does not constitute the hard facts required to evidence Peraton's participation in activities giving rise to a biased ground rules OCI. See *Bland & Assocs., PC*, B-419924, Sept. 28, 2021, 2021 CPD ¶ 332 at 8 (protesters must identify hard facts that show the existence or potential existence of a conflict; mere inference or suspicion of an actual or potential conflict is not enough).

We likewise find no basis to sustain the protester's allegation of an unequal access to information OCI. An unequal access to information OCI exists where a firm has access to nonpublic information as part of its performance of a government contract, and where that information may provide the firm an unfair competitive advantage in a later competition for a government contract. FAR 9.505(b), 9.505-4; *Cyberdata Techs., Inc.*, B-411070 *et al.*, May 1, 2015, 2015 CPD ¶ 150 at 6. Other than general conjecture about overarching policy and strategic information that Peraton could have encountered at planning meetings, DirectViz does not describe any specific information that reasonably constitutes non-public information that could have provided Peraton with a competitive advantage. Moreover, with respect to high-level knowledge of the agency's general priorities, the protester has not shown that such information is beyond the unique information, advantages, and capabilities that a vendor may possess due to its prior experience under a government contract. The government is not necessarily required to equalize competition to compensate for such normally occurring advantages, unless there is evidence of preferential treatment or other improper action. See *Bland & Assocs., PC*, B-419924, Sept. 28, 2021, 2021 CPD ¶ 332 at 6; *CACI, Inc.-Fed.*, B-403064.2, Jan. 28, 2011, 2011 CPD ¶ 31 at 10.

shaping overarching cyber policies and plans for its subordinate components, which include GCC, creating opportunities for Peraton to influence decisions at the ARCYBER level to benefit Peraton's work at the GCC. *Id.* The protester also asserts that Peraton's role under the ARCYBER task order allows Peraton to provide biased advice to ARCYBER about deliverables Peraton would provide under the GCC task order. *Id.*

Based on our review of the record, we agree with the protester that a significant potential conflict of interest arises from Peraton's competing roles under the ARCYBER and GCC task orders, which might impair Peraton's objectivity in the performance of its obligations under the two task orders. In this regard, we find that the contracting officer's conclusions that Peraton is "not authorized to structure policies for the GCC Government personnel on the ARCYBER Task Order" and "does not provide guidance/advice on how the GCC Task Order [contractor] handles its cyber operations," see AR, Tab 85, 2nd OCI Determination at 11, are not supported by the record, specifically the express terms of the PWS for the respective task orders.

For example, the cyberspace operational support task of the ARCYBER task order explains that ARCYBER cyberspace operations "maintain[] Operational Control [] over the RCCs"⁷ and "monitor[] and ingest[] information throughout the RCCs and facilitate[] information flow directly to the ARCYBER Commander." AR, Tab 71u, ARCYBER Task Order at 33. Under this task, however, Peraton as the ARCYBER contractor must "assist in cyberspace operations planning, coordinating, integrating, synchronizing, and conducting cyberspace operations and defense of the Army networks," as well as "develop and maintain [standard operating procedures (SOP)] and [tactics, techniques, and procedures (TTP)] pertinent to all cyberspace operations services." *Id.* Peraton must also "[r]eview, assess, and recommend courses of action in response to confirmed, potential threat activity, and unknown/new vulnerabilities." *Id.* at 35.

At the same time, under the GCC task order, Peraton would support "services to improve the efficiency and effectiveness of operational support services for both the GCC and the Warfighter." AR, Tab 22, PWS at 28. Within this task, Peraton would be required to "perform cybersecurity services to secure DODIN-[Army] information systems and networks" as dictated by applicable DOD and Army security policies and procedures, as well as "establish vulnerability management process to identify, classify, prioritize, remediate and/or mitigate, verify, and document existing vulnerabilities to the network and information systems." *Id.*

These overlapping responsibilities set up an inherent conflict of interest and provide an incentive for Peraton to provide biased advice to the government. For instance, while Peraton assists ARCYBER to develop SOPs and TTPs that would govern cyberspace operations at the GCC, Peraton has an incentive to align these policies and procedures with its own capabilities to perform cybersecurity services under the GCC task order. Moreover, even as Peraton establishes a vulnerability management process for DODIN

⁷ As explained above, GCC is considered one of the RCCs for the purpose of the command relationship with respect to ARCYBER.

under the GCC task order, it would be in position to “[r]eview, assess, and recommend courses of action in response to . . . vulnerabilities” under the ARCYBER task order, where Peraton would have the opportunity and incentive to favorably assess the vulnerability management process at GCC. AR, Tab 71u, ARCYBER Task Order at 35.

As another example, Peraton is required to “assist in planning, coordinating, and synchronizing DODIN operations” under the ARCYBER task order, which includes the responsibility not only to “architect, build, configure, secure, operate, maintain, and sustain networks and information,” but also to “support mission assurance efforts, to include the assessment and implementation of cybersecurity policies [and] programs.” AR, Tab 71u, ARCYBER Task Order at 40. As part of this effort, Peraton must “[c]onduct network and infrastructure plans and assessments for the adoption and implementation of enterprise services, such as cybersecurity” and “[p]rovide weekly updates” on the “status of the implementation plans.” *Id.*

Under the GCC task order, however, Peraton is responsible for “secur[ing], operat[ing], and maintain[ing]” DODIN’s internet protocol networks in accordance with ARCYBER-developed policies and programs, and for providing “Operational Oversight” for the “[c]oordination, partnering, and reporting through other DODIN-[Army] service providers,” including ARCYBER. AR, Tab 22, PWS at 4, 17. Thus, as Peraton carries out its duty under the ARCYBER task order to assess and implement cybersecurity policies for DODIN operations, it is in a position to favorably assess and report on GCC’s implementation of cybersecurity plans, which have been performed by Peraton under the GCC task order.

A similar conflict arises from Peraton’s duties under the information assurance task of the ARCYBER task order, which include “real-time management and surveillance of the Army’s portion of the DODIN,” and require Peraton to “[c]oordinate with . . . RCCs . . . on outages and matters that require escalation to resolve technical deficiencies.” AR, Tab 71u, ARCYBER Task Order at 35. Mirroring this requirement, the GCC task order requires the awardee to provide “24/7 operational oversight, support, and maintenance of all GCC-managed services residing on the Army’s . . . portion of the DODIN-[Army],” including the responsibility to “track and report incidents/outages as outlined in the established SOPs, policy, and guidance.” AR, Tab 22, PWS at 16. The GCC contractor is also required to “develop [after action reports] to document the entirety of the issue, response, and remediation from a holistic perspective across the DODIN which is inclusive of all relevant Service Providers (e.g., . . . ARCYBER . . .).” *Id.* Under these interrelated tasks, it is seemingly possible for Peraton, performing under the ARCYBER task order, to be put in the position of determining and reporting on whether an outage incident at the GCC--as managed by Peraton as the GCC contractor--requires “escalation to resolve technical deficiencies.” AR, Tab 71u, ARCYBER Task Order at 35. In such a scenario, Peraton would have both the incentive and the opportunity to skew its ARCYBER report to put its work under the GCC task order in the most favorable light rather than objectively assessing the effectiveness of its own work.

The above examples illustrate just a few instances where the interplay between the ARCYBER task order and the GCC task order could potentially create an impaired objectivity OCI for a contractor performing on both task orders. In this regard, our Office has sustained allegations of impaired objectivity OCI where the terms of a previously awarded contract or task order would require a contractor to advise the agency on work in which it has a competing interest because of its role in the protested award. See *MANDEX, Inc.*, *supra* at 11-12.

In *MANDEX*, we found that the agency's determination (that there was no impaired objectivity OCI) was unreasonable where the contracting officer failed to consider the full scope of PWS provisions requiring the awardee, performing under a previously awarded task order, to provide input about its work and performance under the protested award. See *id.* In *Inquiries, Inc.*, we sustained an allegation of an impaired objectivity OCI where the role of the awardee's subcontractor under the protested contract would affect its ability to provide unbiased services under a project management task order previously awarded to the subcontractor. See *Inquiries, Inc.*, *supra* at 8-9. Similarly, here, we find that the plain terms of the two task orders' performance requirements raise a significant potential impaired objectivity OCI, where Peraton's ability to provide unbiased advice under the ARCYBER task order is impaired by its competing interest as the contractor performing the GCC task order.

Inadequate OCI Investigation

The protester also argues that the agency failed to meaningfully investigate Peraton's OCI because the contracting officer did not examine the work Peraton performs under the ARCYBER task order in relation to the work it would perform under the GCC task order. Comments & 2nd Supp. Protest at 44-46, 62-70. Based on our review of the record before us, we agree.

Despite the contracting officer's conclusion that no OCI arises from Peraton's roles under the two task orders, neither of the two OCI determinations show any analysis with respect to the work required to be performed under the PWSs of the respective task orders. In this regard, although the contracting officer conducted two rounds of OCI investigations based on the protest allegations, neither OCI determination addresses any of the specific sections of the ARCYBER task order and the GCC PWS that the protester cites as potentially giving rise to an impaired objectivity OCI. See *generally*, AR, Tab 71, OCI Determination; AR, Tab 85, 2nd OCI Determination. Instead, the contracting officer's analysis of an impaired objectivity OCI relies entirely on: (1) conclusory declarations of the contracting officer representative (COR) for the GCC task order and an acquisition official for ARCYBER; (2) self-serving statements from Peraton that patently conflict with the plain terms of the PWSs; and (3) the role of government officials providing final sign-off on contractor work products. See AR, Tab 71, OCI Determination at 9-10; AR, Tab 85, 2nd OCI Determination at 11-14. As further discussed below, we find the contracting officer's reliance on these aspects of its investigation without an independent analysis of the respective PWSs to be unreasonable.

First, the record shows that the declarations provided by the GCC task order COR and the ARCYBER acquisition official were entirely conclusory and, like the contracting officer's OCI determinations, lacked any analysis of the specific PWS provisions, including those painstakingly enumerated by the protester. See AR, Tab 71w, Decl. of GCC COR at 1-2; AR, Tab 71x, Decl. of ARCYBER Official at 1-2; AR, Tab 81, 2nd Decl. of GCC COR at 1-3; AR, Tab 82, 2nd Decl. of ARCYBER Official at 1-4. For example, both the GCC COR and the ARCYBER Official conclude, without any documented analysis of specific PWS sections, that "ARCYBER does not provide guidance or advice on how the GCC handles its cyber operations . . . [and] ARCYBER does not dictate how the GCC execute any part of its mission." AR, Tab 81, 2nd Decl. of GCC COR at 2; AR, Tab 82, 2nd Decl. of ARCYBER Official at 2. The contracting officer, in his OCI determinations, adopts these conclusory statements without any additional analysis of the work required to be performed by Peraton under the two task orders. However, as discussed above, the declarants' conclusory remarks are belied by the ARCYBER PWS provisions requiring Peraton to assist ARCYBER in developing policies and strategies governing the cyber operations at the GCC level, as well as the GCC PWS requiring the GCC contractor to take operational direction from ARCYBER. Thus, we find unreasonable the contracting officer's wholesale adoption of these declarants' conclusory statements without independently analyzing the work required under the two task orders.

Second, we also find unreasonable the contracting officer's reliance on Peraton's responses to OCI questions where the responses plainly conflicted with the terms of the respective PWS. In this regard, in responding "No" to the question asking whether Peraton "through the ARCYBER task order provide[s] advice about GCC cyber operations," Peraton provided a list of areas where it only provides technical support for "an inherent Governmental function and responsibility performed only by Government personnel." Tab 71y, Peraton Responses to OCI Questions at 3-4. The plain terms of the ARCYBER task order, however, list those same tasks as part of the contractor's responsibility. For example, Peraton states that "*Government personnel* in ARCYBER HQs are responsible for providing intelligence support to the RCCs/GCC and for conducting all-source analysis and production support for full spectrum cyberspace operations and planning." *Id.* at 4 (emphasis added). The ARCYBER PWS, however, provides that "[t]he contractor shall provide all-source intelligence support for the RCCs" and "[c]onduct all-source analysis and production support to full spectrum cyberspace operations and planning at the RCCs." AR, Tab 71u, ARCYBER Task Order at 25 (emphasis added). The contracting officer's OCI determination relies on the awardee's self-serving responses without meaningfully considering the actual PWS provisions that gave rise to the OCI concerns and, in so doing, fails to note the inconsistencies between Peraton's statements and the clearly stated PWS requirements under the ARCYBER task order. See AR, Tab 85, 2nd OCI Determination at 12-14.

Third, in light of the contracting officer's failure to recognize any potential OCI from Peraton's competing roles under the two task orders--as well as Peraton's statement that it has no OCIs to disclose or mitigate, see AR, Tab 38, Peraton Proposal General

Vol. at 5--we find that the OCI concerns here are not mitigated by the contracting officer's general reliance on the role of agency officials. In this regard, the contracting officer explains that "any input received [by GCC] from ARCYBER would be from Government personnel only" and that "even if Peraton did provide support for [the GCC] task order, any product that GCC sends to ARCYBER has to be coordinated and approved" by government officials. AR, Tab 85, 2nd OCI Determination at 12. The contracting officer further concludes that, because "Peraton's advice to GCC would be limited to technical, objective advice reviewed by Government personnel," it "could not give rise to an opportunity for Peraton to shade that advice to benefit its other contract team." *Id.* at 13.

Our Office has explained, however, that the fact that agency officials must approve any recommendations from the contractor does not inherently mitigate the risk that the advice received from the contractor could be biased. See *Inquiries, Inc.*, *supra* at 10 ("We conclude that the contracting officer's blanket reliance on the requirement that changes must be approved by government personnel does not reasonably show that the contracting officer gave meaningful consideration to the risk of impaired objectivity OCIs."). As noted, the purpose of an OCI review is to determine whether a firm's advice to the government would be impaired by conflicting duties or interests. *AT&T Corp.*, *supra*. Here, as discussed above, the expansive *contractor* responsibilities under the ARCYBER task order require Peraton to "[p]rovide assistance in the development, inspection, evaluation, and oversight of cybersecurity policies and procedures" for the ARCYBER headquarters and its subordinate components that specifically include the GCC. AR, Tab 71u, ARCYBER Task Order at 41. We conclude that the final approval of government personnel for these policies and procedures before they are deployed to GCC does not resolve the risk that Peraton's ability to provide objective advice on such policies and procedures might be impaired by its interest in benefiting Peraton's work under the GCC task order.

Finally, to the extent the contracting officer relied on the fact that the two task orders are administered by two different acquisition offices or the statement that Peraton would not be involved in evaluating contractor performance, we find such reliance to be misplaced. In this regard, the contracting officer concluded that there is no opportunity for Peraton, performing under the ARCYBER task order, to direct its work under the GCC task order because the ARCYBER task order was issued under GSA's OASIS IDIQ contract, which was managed by a contracting office separate from the one managing the GCC task order issued under the Army's CHESS-ITESS IDIQ contract. AR, Tab 85, 2nd OCI Determination at 12-13. The contracting officer further concluded that Peraton would not be evaluating its own work because the evaluation of contractor performance in the Contractor Performance Assessment Reporting System (CPARS) will be completed by government personnel without any contractor input or access. *Id.* at 13-14.

In light of the circumstances here, we find that both of these lines of inquiry are irrelevant to determining whether there is an impaired objectivity OCI. Again, the purpose of an impaired objectivity OCI review is to determine whether *the firm's advice to the government* in the performance of the requirements would be impaired by

conflicting duties or interests. Here, the fact that the two task orders were issued under different contract vehicles or are administered by different contracting offices has no bearing on whether the ability of the same contractor to render objective services under one task order may be impaired by its competing interest in performing the other task order. Likewise, when questioning whether the contractor would be evaluating its own work, the concern is not with the evaluation of contractor performance in CPARS, but on whether the contractor, during the performance of its duties under one contract, would be tasked with evaluating or assessing its own product or services provided under a different contract.

In sum, we find that the contracting officer unreasonably failed to meaningfully consider whether the work Peraton is required to perform under the terms of the respective PWSs of the ARCYBER task order and the GCC task order would impair Peraton's ability to provide objective and unbiased services to the agency. As discussed above, the plain terms of the respective PWSs include several overlapping responsibilities with significant potential for an impaired objectivity OCI in Peraton's performance of both task orders, yet the contracting officer's OCI investigation did not address any of these PWS provisions. In light of this missing analysis, we have no basis to conclude that the OCI determination was reasonable or sufficient. We therefore sustain the protest on this basis.

Demonstrated Prior Experience

The protester argues that the agency unreasonably evaluated proposals under the demonstrated prior experience factor. Specifically, the protester contends that the agency failed to give sufficient credit for DirectViz's highly relevant experience under the incumbent task order. The protester also asserts that the agency improperly credited the awardee's proposal for the experience of its subsidiary entities. Based on our review of the record, we find no merit to these arguments.

The evaluation of proposals in a task order competition is primarily a matter within the contracting agency's discretion because the agency is responsible for defining its needs and the best method of accommodating them. *Verizon Bus. Network Servs., Inc.*, B-419271.5 *et al.*, Apr. 26, 2021, 2021 CPD ¶ 191 at 7. In reviewing protests of an award in a task order competition, we do not reevaluate proposals, but examine the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations. *Technatomy Corp.*, B-411583, Sept. 4, 2015, 2015 CPD ¶ 282 at 4-5. A protester's disagreement with the agency's evaluation judgment, without more, is not sufficient to establish that an agency acted unreasonably. *Verizon Bus. Network Servs., Inc.*, *supra*.

Protester's Incumbent Experience

The protester first asserts that the agency unreasonably failed to identify additional distinguishing benefits for DirectViz's demonstrated prior experience as the contractor

currently performing the incumbent effort under the predecessor task order. Protest at 33-40. In this regard, the protester argues that aspects of its highly similar work performed on the incumbent effort deserved more recognition in the agency's evaluation and best-value tradeoff. *Id.*; Comments & 2nd Supp. Protest at 15-16.

The agency responds that it evaluated the protester's experience submission reasonably and in accordance with the solicitation. Specifically, the agency contends that the protester received the highest possible rating based on its incumbent experience and was not entitled to receive any additional credit. COS/MOL at 48-50.

The record shows that the protester submitted one experience reference in its proposal, describing its incumbent effort on the predecessor task order supporting the Army's RCC-CONUS. AR, Tab 27, DirectViz Experience Proposal at 7. In assigning the highest rating possible, high confidence, the agency noted that DirectViz's experience "demonstrated that it is familiar with the Global Cyber Center [] mission." AR, Tab 60, DirectViz Experience Evaluation at 1. The agency also found that DirectViz "demonstrated experience on a contract of similar size and scope with the services identified in [PWS] para[graphs] 3.0 to 3.6.1.14.2." *Id.* In the comparative analysis of DirectViz and Peraton's proposals, however, the SSA noted that while both offerors received the rating of high confidence under the demonstrated prior experience factor, Peraton's experience under a contract with the Navy's Next Generation Enterprise Network (NGEN) had "a larger size, complexity, and scope than" the instant requirement. AR, Tab 65, TODD at 39.

On this record, we find no basis to object to the agency's evaluation of the protester's incumbent experience. First, our Office has explained that there is no requirement that an incumbent be given extra credit for its status as an incumbent, or that an agency assign or reserve the highest rating for the incumbent offeror. *Candor Sol's, LLC*, B-417950.5, B-417950.6, May 10, 2021, 2021 CPD ¶ 199 at 15. An offeror's belief that its incumbency status entitles it to higher ratings or additional assessed strengths does not provide a basis for finding that the agency's evaluation was unreasonable. *See id.*

In addition, the agency explains that the scope of work under the instant solicitation was anticipated to include work beyond the scope of the incumbent task order. COS/MOL at 3-5, 48-49. In this regard, the solicitation specified that "[a]dditional potential, anticipated mission changes over the life of the contract include transitioning from a RCC to a [GCC] that helps support better coordination of digital operations across the world." TOPR at 1; *see also id.* at 16, 20 (requiring proposed betterments to exceed requirements in a way that is meaningful for the agency "for transitioning from [a RCC] to a [GCC] that coordinates better digital operations across the world, and all five of the RCCs."). Based on this record, we find no basis to question the agency's conclusion that the protester's incumbent experience did not warrant any extra recognition beyond the assigned rating of high confidence.

Awardee's Affiliate Experience

The protester also challenges the agency's evaluation of the awardee's demonstrated prior experience, alleging that the agency improperly credited Peraton for the experience of the firm's affiliate entities. Comments & 2nd Supp. Protest at 6-15. The record shows that Peraton submitted two experience references, both performed by its wholly owned subsidiary entities--Peraton Technology Services, Inc. and Peraton Enterprise Solutions, LLC. AR, Tab 39, Peraton Experience Proposal at 5. The protester argues that Peraton's proposal did not warrant this credit because it did not clearly show these affiliates' involvement in the performance of the task order. *Id.* The agency responds that the solicitation did not prohibit the submission of affiliate experience as an offeror's own experience and that Peraton's proposal sufficiently described the commitment of its affiliate resources for performing the instant requirement. Supp. COS/MOL at 7-30. Based on our review of the record, we agree with the agency.

An agency properly may attribute the experience or past performance of a parent or affiliated company to an offeror where the firm's proposal demonstrates that the resources of the parent or affiliate will affect the performance of the offeror. *Alutiiq Pac., LLC*, B-409584, B-409584.2, June 18, 2014, 2014 CPD ¶ 196 at 4. The relevant consideration is whether the resources of the parent or affiliated company--its workforce, management, facilities or other resources--will be provided or relied upon for contract performance such that the parent or affiliate will have meaningful involvement in contract performance. *Peraton, Inc.*, B-421038.6 *et al.*, Apr. 12, 2023, 2023 CPD ¶ 92.

Here, the awardee's proposal reflects the meaningful involvement of its affiliate entities. Specifically, Peraton's demonstrated experience volume explained that Peraton "manages its combined business, including all subsidiaries, with a centralized leadership structure, consolidated business systems, and common practices, personnel, and other resources to effectively serve multiple government customers worldwide." AR, Tab 39, Peraton Experience Proposal at 5. Moreover, the proposal expressly stated as follows:

. . . the personnel, resources, and qualifications offered and committed in this proposal, including those in the corporate experience and past performance citations relied on herein--specifically, ARCYBER [Cyberspace Operations Support] Contract, held by Peraton subsidiary Peraton Technology Services Inc., and NGEN Contract, held by Peraton subsidiary Peraton Enterprise Solutions LLC, under its former name, Perspecta Enterprise Solutions LLC--are fully available and attributable to Peraton for the successful performance of the requirements of this solicitation.

*Id.*⁸ On this record, we find that the agency reasonably relied on the stated performance commitment of Peraton's affiliate resources to attribute the experience of those affiliated companies to the awardee.

The protester argues that the agency's arguments in this regard should be disregarded as impermissible *post hoc* rationalizations because the contemporaneous evaluation documents do not include any discussion of Peraton's affiliate entities. Supp. Comments at 13-19. To support its post-protest explanations, the agency submitted a declaration from the technical chair of the PEB stating that the evaluators "reviewed the information submitted regarding Peraton's corporate acquisitions and structure," and "concluded that Peraton had demonstrated sufficient integration and reliance on the affiliates' resources to treat their experience as the offeror's own." AR, Tab 83, Technical Chair Decl. at 2-3.

Our Office has explained that, in reviewing an agency's evaluation, we will not limit our review to contemporaneously documented evidence, but instead will consider all the information provided, including a party's arguments and explanations. *American Sys. Corp.*, B-420132 *et al.*, Dec. 13, 2021, 2021 CPD ¶ 387 at 10. Although we generally give little or no weight to reevaluations and judgments prepared in the heat of the adversarial process, post-protest explanations that provide a detailed rationale for contemporaneous conclusions, and simply fill in previously unrecorded details, will generally be considered in our review, as long as those explanations are credible and consistent with the contemporaneous record. *Id.* Here, we find the agency's post-protest explanation to be credible and consistent with the contemporaneous evaluation record, which does not include any reason to call into question the commitment of these affiliate resources in the performance of the task order.⁹

⁸ Since the solicitation did not require a technical approach proposal, Peraton's commitment of its subsidiary resources was provided as part of the demonstrated experience volume of its proposal.

⁹ DirectViz also contends that it was improper for the agency to consider one of Peraton's two experience references because it was for work performed under an IDIQ contract rather than an individual task order under that contract. Comments & 2nd Supp. Protest at 12-15. As the agency points out, however, the solicitation required offerors to submit "up to three contracts/orders" performed within the past seven years to demonstrate their prior experience and to describe how the firm's "experience for these contracts/orders in supporting similar efforts" is like the instant requirement. Supp. COS/MOL at 25; see TOPR at 10. The language of the solicitation, therefore, permitted offerors to submit references by describing work performed at the IDIQ contract level. Accordingly, we find no basis to object to the agency's consideration of Peraton's experience under an IDIQ contract.

Key Personnel Resumes

The protester next argues that the agency erroneously assigned a rating of high confidence to the awardee's proposal under the key personnel resumes factor when Peraton's proposed virtualization/cloud computing senior subject matter expert (SME) did not meet the minimum certification requirement. Protest at 45-47; Comments & 2nd Supp. Protest at 16-20. Specifically, the protester asserts that the solicitation required a "VMware Certified *Advanced* Professional" for this position, but Peraton's proposed key person was only a "VMware Certified Professional." *Id.* The agency responds that the protester mistakenly refers to the requirement for a different position. In this regard, the Army asserts that the solicitation only required a "VMware Certified Professional" certification (without the "advanced" designation) for the proposed virtualization/cloud computing senior SME. COS/MOL at 52-54.

The solicitation here required offerors to submit resumes for seven key positions, including a "Virtualization/Cloud Computing Senior [SME]." TOPR at 10. The solicitation advised that submitted resumes "shall clearly demonstrate how each of the proposed Key Personnel meets the requirements for appropriate experience, certifications, and qualifications" based on two PWS-provided tables: table 2, expert-level positions requirements, and table 3, key technical personnel certifications. *Id.* at 10-11. The virtualization/cloud computing senior SME position only appears on table 3. AR, Tab 22, PWS at 52. As listed in table 3, the position required a "VMware Certified Professional" certification, as well as a number of cloud-related certifications. *Id.*

On the other hand, table 2, which described "some functional areas [that] require expert level expertise," included the position of a "Virtualization Infrastructure Senior [SME]" among the 16 functional areas/positions. *Id.* at 50-51. Table 2 specified that the virtualization infrastructure senior SME be a "VMware Certified *Advanced* Professional." *Id.* at 51 (emphasis added). Although the protester argues that the virtualization *infrastructure* senior SME in table 2 and the virtualization/*cloud computing* senior SME in table 3 are one and the same key position, the plain reading of the solicitation language does not support this interpretation.

Where a dispute exists as to a solicitation's actual requirements, we will first examine the plain language of the solicitation. *Karthik Consulting, LLC*, B-421610.2, May 31, 2023, 2023 CPD ¶ 134 at 2. Where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. *Crew Training Int'l, Inc.*, B-414126, Feb. 7, 2017, 2017 CPD ¶ 53 at 4. An ambiguity exists where two or more reasonable interpretations of the terms or specifications of the solicitation are possible; a patent ambiguity exists where the solicitation contains an obvious, gross, or glaring error. *FFLPro, LLC*, B-411427.2, Sept. 22, 2015, 2015 CPD ¶ 289 at 10. Where a patent ambiguity is not challenged prior to the submission of solicitation responses, we will not consider

subsequent untimely arguments asserting the protester's own interpretation of the ambiguous provisions. *Id.*

As an initial matter, we note that the solicitation here required resumes for seven key personnel positions. However, table 2 lists 16 (not 7) positions and specifies that these positions are for functional areas that require "expert level expertise." AR, Tab 22, PWS at 50. With respect to these positions, the PWS notes that the contractor would be required to "retain personnel with management and technical knowledge, skills, expertise, and experience needed to accomplish the performance of work under this task order," but contains no specific proposal submission requirements. *Id.* The PWS also specifically notes that "[s]ome, but not[] all[,] expert-level positions will also be identified as key technical positions." *Id.* Indeed, a review of the two tables shows little overlap between the 16 positions listed in table 2 and the 7 "Key Technical Personnel" positions listed in table 3. *Compare id.* at 50-51 *with id.* at 52. For example, the required key positions of network senior SME and cyber security senior SME are listed among the key personnel positions in table 3 without any directly equivalent positions among the expert-level positions in table 2. *Id.*

Further, the record shows that the two positions--virtualization infrastructure senior SME and virtualization/cloud computing senior SME--have materially different certification requirements in addition to the VMware certification. The virtualization infrastructure senior SME position requires a "[Microsoft Certified Solutions Expert (MCSE)]: Core Infrastructure" certification, while the virtualization/cloud computing senior SME requires a cloud-related certification of "Azure Administrator Associate **OR** AWS Certified Solutions Architect--Associate . . . **OR** CompTIA Cloud+" or "MCSE Cloud Platform & Infrastructure." *Id.* at 51-52.

Reading the solicitation as a whole in a manner that gives effect to these provisions, the only reasonable interpretation is that the virtualization infrastructure senior SME detailed in table 2 and the virtualization/cloud computing senior SME in table 3 are two different positions. Of the two, only the virtualization/cloud computing senior SME is designated as a key person to be evaluated under the key personnel resume factor, and this position requires a VMware certification without the "advanced" designation. Moreover, even if it was reasonable for the protester to interpret the two positions to be one and the same, solicitation terms providing different certification requirements for the same position would be an obvious or glaring error that constitutes a patent ambiguity, which should have been protested prior to the submission of solicitation responses. *FFLPro, LLC, supra*. We will not now consider the protester's untimely arguments asserting its own interpretation of the patently ambiguous provision.

The record here shows--and the protester does not dispute--that Peraton's resume for its proposed virtualization/cloud computing senior SME had the VMware certified professional certification. See AR, Tab 40, Peraton's Key Personnel Proposal at 13. Accordingly, we find nothing unreasonable in the agency's finding that the awardee's proposed virtualization/cloud computing senior SME satisfied the solicitation's certification requirement.

Betterment

The protester next asserts that the agency unreasonably failed to credit DirectViz's proposal for multiple additional betterments. Protest at 59-64. The protester also contends that the agency treated offerors disparately by crediting Peraton with a betterment for proposing data-driven dashboards while failing to credit DirectViz for a similar aspect of its proposal. Comments & 2nd Supp. Protest at 30-32. The agency responds that it evaluated the offerors' proposed betterments in accordance with the solicitation and asserts that the protester's arguments amount to nothing more than disagreement with the agency's reasonable judgment. COS/MOL at 73-76; Supp. COS/MOL at 39-43. Based on our review of the record, we agree with the agency.

As noted above, the solicitation instructed offerors to propose "betterments," defined as any instance where the proposed solution exceeds the requirement in a way that is meaningful to the agency. TOPR at 16, 20. Proposed betterments would be evaluated for "the value to the Government of any betterments that are promised in the solution for transitioning from a [RCC] to a [GCC] that can help better coordinate cyber space operations across the world, and all five of the RCCs." *Id.* at 20. In evaluating multiple betterments listed in DirectViz's proposal, the agency found that only one of them offered a betterment that exceeds the requirement in a way that is meaningful to the agency. See AR, Tab 63, DirectViz Betterment Evaluation at 1-2. While the protester claims that all of its proposed betterments deserved credit, the record provides no basis for questioning the agency's evaluative judgment.

For example, the agency declined to find a betterment in the protester's proposal of a centralized service delivery for a global network because "it is currently a requirement under [PWS] paragraph 3.3.3.1." *Id.* at 1. The agency supplements this record by further explaining that the protester's description of its centralized service delivery did not meaningfully exceed the cited PWS requirement for the contractor to "perform . . . support functions to remotely operate, monitor, sustain, and secure the Enterprise network within GCC responsibility boundaries." AR, Tab 83, Technical Evaluation Board (TEB) Chair Decl. at 6; AR, Tab 22, PWS § 3.3.3.1. While the protester disagrees with this assessment, it does not meaningfully explain how its proposed betterment exceeded the PWS requirement.

The protester also asserts that the agency treated DirectViz and Peraton disparately when the agency credited a betterment for Peraton's proposed dashboard approach while declining to credit a betterment for a similar aspect of DirectViz's proposal. Comments & 2nd Supp. Protest at 30-32. The agency responds that the difference in the evaluation is directly attributable to the differences in the offerors' proposals. Supp. COS/MOL at 39-41.

It is a fundamental principle of federal procurement law that a contracting agency must treat all offerors equally and evaluate proposals evenhandedly against the solicitation's requirements and evaluation criteria. See *UltiSat, Inc.*, B-416809 *et al.*, Dec. 18, 2018, 2019 CPD ¶ 6 at 9. Where a protester alleges unequal treatment in a technical

evaluation, it must show that the differences in the evaluation did not stem from differences between the proposals. See *Camber Corp.*, B-413505, Nov. 10, 2016, 2016 CPD ¶ 350 at 8. To prevail on an allegation of disparate treatment, a protester must show that the agency unreasonably downgraded its proposal for aspects that were substantively indistinguishable from, or nearly identical to, those contained in other proposals. See *Battelle Mem'l Inst.*, B-418047.3, B-418047.4, May 18, 2020, 2020 CPD ¶ 176 at 5.

Here, the agency found one betterment in each of DirectViz's and Peraton's proposals. See AR, Tab 65, TODD at 35. Peraton's betterment was assessed for the firm's approach to automated workflows, which "uses the Army's existing tool suite . . . to create data-driven dashboards that enable the Army to fuse, interpret, and visualize large amounts of data." AR, Tab 62, Peraton Betterment Evaluation at 1. The evaluators detailed their rationale for this finding as follows:

As the [GCC] scope of responsibilities grows in breadth and depth, responding to the Army's information technology needs will become more demanding. This value-added method provides the GCC with additional technical experience in the tool suite identified above in the Offeror's proposal. Also, the method leans on software tools provided by existing systems of record, such as Army 365, thereby preventing further tools adoption (*i.e.* tool bloat). Employing methods that augment system of records, such as Army Enterprise Service Management Platform (AESMP), will enable the GCC to perform newer obligations more effectively and efficiently. This is above what is required in the PWS, Appendix C, Table 2: Incident Management Standards, (1) Critical Incident Response rates of 94 [percent] within an hour, (2) High- and medium-priority incidents exceed response rates of 92 [percent] within 2 core hours and 5 core hours, respectively.

Id.

While the protester asserts that it also deserved credit for proposing data-driven dashboards, Comments & 2nd Supp. Protest at 30-32, the record does not support this assertion. In this regard, the agency considered DirectViz's proposed approach of proposing a "[DELETED]" that will provide "[DELETED]," allowing "[DELETED]." AR, Tab 63, DirectViz Betterment Evaluation at 1 (*quoting* AR, Tab 33, DirectViz Betterment Proposal at 1). In declining to assess a betterment for this approach, the evaluators found that DirectViz's solution was "currently a requirement under PWS paragraph 3.4.2.6," which required "[c]oordination with Web Services personnel to develop and maintain visualizations and dashboards in support of operations." *Id.*; see AR, Tab 22, PWS § 3.4.2.6.

The TEB chair further explains the difference between the offerors' approaches by stating that DirectViz's dashboard approach was "limited to a [DELETED], and did not improve response times for incident management standards." AR, Tab 83, TEB Chair

Decl. at 6. In contrast, as noted in the contemporaneous evaluation documentation and further explained by the TEB chair, Peraton's proposal "described the implementation of a Real-Time Performance Monitor dashboard[]" that went beyond the PWS-required [DELETED] to provide "improve[d] response times for incident management standards." *Id.* at 5; see AR, Tab 62, Peraton Betterment Evaluation at 1. Although the protester disagrees with the agency's assessment of the value in improved response times for incident management, Supp. Comments at 35-38, such disagreement alone does not establish that the agency's evaluation was unreasonable. Accordingly, we find no basis to sustain the protester's challenges to the agency's evaluation under this factor.

Oral Presentations

The protester next asserts that the agency failed to maintain an adequate record of oral presentations. Specifically, DirectViz contends that the Army failed to document the content of oral presentations such that the record lacks an adequate basis on which to assess the agency's evaluation. Protest at 58-59; Comments & 2nd Supp. Protest at 20-28. The protester also disagrees with several of the agency's unfavorable findings as noted in the agency's documented evaluation of DirectViz's oral presentation. Protest at 50-53. We find the protester's arguments to be without merit.

As an initial matter, in challenging the agency's documentation of oral presentations, the protester cites to FAR section 15.102(e), which requires agencies to maintain a record of oral presentations, and relies in part on our decision in *HomeSafe Alliance, LLC*, B-418266.5 *et al.*, Oct. 21, 2020, 2020 CPD ¶ 350. We find, however, that the protester's reliance on that FAR provision and our decision in *HomeSafe* is misplaced because the procurement at issue here was a task order competition conducted under the procedures of FAR subpart 16.5. As our Office has previously explained, a task order competition under FAR subpart 16.5 provides for a streamlined procurement process requiring less rigorous documentation. See *Accenture Fed. Servs., LLC*, B-421134.2 *et al.*, Apr. 12, 2023, 2023 CPD ¶ 90 at 13-14; *Booz Allen Hamilton, Inc.*, B-419210, B-419210.2, Dec. 22, 2020, 2020 CPD ¶ 409 at 4-5.

Unlike the FAR provisions governing negotiated procurements conducted under FAR part 15, there is no requirement for a separate evaluation record for oral presentations in task order procurements conducted under FAR subpart 16.5. Compare FAR 15.102(e), with FAR 16.505(b)(7). More specifically, FAR section 16.505(b)(1)(ii) provides that contracting officers may "exercise broad discretion in developing appropriate order placement procedures," "keep submission requirements to a minimum," and "use streamlined procedures including oral presentations." With respect to the required documentation in task order competitions, FAR section 16.505(b)(7)(i) requires agencies only to "document in the contract file the rationale for placement and price of each order, including the basis for award and the rationale for any tradeoffs among cost or price and non-cost considerations in making the award decision."

Here, the solicitation provided that the oral presentations "may or may not be recorded by the Government," and, in fact, the presentations were not recorded. TOPR at 16;

COS/MOL at 62. The agency instead documented the oral presentations by retaining the contemporaneous handwritten notes of the contracting officer and the three TEB members, who later convened a panel to prepare a consensus evaluation of the oral presentations. COS/MOL at 62; see AR, Tab 64, Oral Presentation Final Evaluation Report; AR, Tabs 70a, 70b, 70c, Individual Evaluator Notes.¹⁰

Based on our review of this record, we find sufficient contemporaneous documentation of the agency's evaluative judgments of the offerors' oral presentations. Moreover, while the evaluators' notes do not document every aspect of the offerors' oral presentations, they do provide the agency's documentation of the particular aspects of the offerors' presentations upon which the evaluators based their evaluation judgments.¹¹ Where the solicitation specifically advised offerors that the agency may not record the oral presentations, we see nothing in the applicable laws or regulations that required the agency to go further and record or otherwise transcribe the content of the oral presentations, in exacting detail, when conducting a procurement under FAR subpart 16.5. See *Accenture Fed. Servs., LLC, supra*; cf., *Analytica, LLC*, B-418966, Nov. 9, 2020, 2020 CPD ¶ 365 at 7 ("We see no requirement in law or regulation that an agency go further to record oral presentations when conducting a procurement under subpart 8.4, and it is not our role to impose one where the FAR does not.").

In addition, while the protester generally challenges every unfavorable finding noted in the evaluation of its oral presentation, we find that the protester's assertions offer nothing more than its disagreement with the agency's evaluative judgments. See Protest at 50-53; Comments & 2nd Supp. Protest at 20-28. The record shows that the agency documented several areas that DirectViz's presentation did not address before ultimately assigning it the highest possible rating of high confidence. See AR, Tab 64, Oral Presentation Final Evaluation Report at 12-16. Despite asserting that it "disagrees with these findings," the protester does not offer any specific statements to counter the agency's evaluation conclusions other than to generally aver that the protester "believes it fully responded to each oral presentation question and fully addressed every

¹⁰ In response to the protester's complaint that "[m]uch of the evaluators' notes are illegible," Comments & Supp. Protest at 21, our Office requested that the agency provide typed transcriptions of the evaluators' handwritten notes, and the agency supplemented the record with the requested transcriptions. See AR, Tabs 70a(1), 70b(1), 70c(1), Transcribed Individual Evaluator Notes.

¹¹ We also reject the protester's assertion that the documentation is inadequate because the content of the evaluators' notes were internally inconsistent when compared to one another and the consensus evaluation. See Comments & 2nd Supp. Protest at 23-27; Supp. Comments at 33. It is well-settled that, following discussions among evaluators, an agency may reach consensus conclusions that do not reflect the initial assessments of individual evaluators or correct mistakes or misperceptions noted in an individual evaluator's assessment. See *Accenture Fed. Servs., LLC, supra* at 14; see e.g., *Unitec Distribution Sys.*, B-419874, B-419874.2, Aug. 20, 2021, 2021 CPD ¶ 307 at 4; *Resource Applications, Inc.*, B-274943.3, Mar. 5, 1997, 97-1 CPD ¶ 137 at 5.

requirement.” Protest at 50. Although the protester faults the agency’s failure to sufficiently record the details of the oral presentation and argues that the contemporaneous evaluation is unclear and contradictory, the protester does not present any alternative recollections of the content of its presentation to rebut the agency’s documented evaluation. On this record, we find no basis to fault the agency’s evaluation of DirectViz’s oral presentation.

The protester also contends that the agency’s conduct of the oral presentations constituted discussions because, by asking a follow-up question at the end of each oral presentation, the agency allowed offerors to revise or add to what was presented, which amounted to allowing revised proposals. Protest at 51-53; Comments & 2nd Supp. Protest at 28-30. The protester argues that these alleged discussions were misleading and not meaningful because the agency asked only one question without affording DirectViz an opportunity to address other “ostensible gaps in DVS’s oral presentation.” Protest at 52. Based on the record before us, we find no merit to the protester’s contention that the agency’s conduct of oral presentations constituted discussions.

As discussed above, the instant task order procurement was conducted under FAR subpart 16.5, and the solicitation specifically warned offerors that “the contracting techniques under FAR part 15.3 do not apply” and that “FAR 15.3 procedures will not be utilized to review any subsequent award.” TOPR at 4. With respect to oral presentations, the solicitation advised that the oral presentation was intended to be “an interactive exchange between the Offeror and the Government,” which would be “viewed as a component of the oral presentation itself [that did] not constitute discussions.” *Id.* at 17. The solicitation further stated that the agency “will not ask questions that will invite or allow the Offeror to change its Proposal” and prohibited offerors from “volunteer[ing] any information that might be construed as changing its proposal.” *Id.*

Each of the offerors were asked one follow-up question during oral presentations. COS/MOL at 63; see AR, Tab 70d, Contracting Officer’s Oral Presentation Notes at 4. The agency asserts that these limited follow-up questions were not discussions because they were specifically limited to clarifying the evaluators’ understanding of the solution presented during the presentation and did not permit any proposal revisions. Supp. COS/MOL at 38-39. For example, the agency asked DirectViz to “expand upon [its] model to deny access to the remaining 550,000 end[-]user devices for the same touch-labor administrators,” thus seeking more information on the model DirectViz presented in response to the third oral presentation question. AR, Tab 70d, Contracting Officer’s Oral Presentation Notes at 4.

While the protester argues that this question allowed DirectViz to supplement its oral presentations and thus constituted discussions, the protester does not elaborate on how--or even whether--its response to the follow-up question revised its presented solution to the scenario-based oral presentation question. As the protester points out, the consensus evaluation report did not specifically discuss DirectViz’s response to the follow-up question, but instead stated the evaluation conclusion that DirectViz

“explained an applicable solution to the problem presented in this question with an expert level of understanding of the Entra ID system.” AR, Tab 64, Oral Presentation Final Evaluation Report at 12. The agency further found that DirectViz “correctly identified several key areas such as [DELETED], [DELETED], and [DELETED].” *Id.* The protester makes no showing--or even allegation--that it provided any information during the question-and-answer portion of the oral presentation that substantively revised its proposed solution or the agency’s evaluation thereof. On this record, we see no basis to conclude that the agency’s carefully limited follow-up question constituted discussions.¹² Accordingly, since the agency did not engage in discussions, we conclude the protester’s allegation that the agency engaged in misleading discussions is without merit.

Cost Evaluations

The protester also asserts that the agency’s cost realism analysis failed to consider offerors’ unique technical approaches. Protest at 64-66; Comments & 2nd Supp. Protest at 37-39. We find no basis to sustain this protest ground.

When an agency evaluates proposals for the award of a cost-reimbursement contract or task order, it must perform a cost realism analysis to determine the extent to which an offeror’s proposed costs are realistic for the work to be performed. FAR 15.305(a)(1), 15.404-1(d); *IAP-C4ISR, LLC*, B-421726.2 *et al.*, Feb. 12, 2024, 2024 CPD ¶ 52 at 10. An offeror’s costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. FAR 16.505(b)(3); 15.305(a)(1); *Engility Corp.*, B-413120.3 *et al.*, Feb. 14, 2017, 2017 CPD ¶ 70 at 18. An agency’s cost realism analysis requires the exercise of informed judgment, and we review an agency’s judgment in this area only to see that the analysis was reasonably based and not arbitrary. *Id.* The analysis need not achieve scientific certainty; rather, the methodology used must be reasonably adequate and provide some measure of confidence that the agency’s conclusions about the most probable costs for an offeror’s proposal are reasonable and realistic in view of other cost information reasonably available to the agency at the time of its evaluation. *TeleCommunication Sys., Inc.*, B-413265, B-413265.2, Sept. 21, 2016, 2016 CPD ¶ 266 at 10.

In challenging the agency’s cost realism analysis, the protester essentially asserts that the agency’s methodology was flawed because the Army did not have offerors’ technical approaches to compare against their respective cost proposals. We note, however, that the solicitation did not require the submission of an offeror’s technical

¹² We note, at any rate, that even if we were to conclude that the agency’s limited follow-up question constituted discussions, the protester does not explain how the discussions were misleading or not meaningful. Specifically, while the protester takes issue with each unfavorable finding noted in the agency’s evaluation of DirectViz’s oral presentation, the protester does not explain why the agency was required to raise those findings in discussions when they were not significant enough to prevent the agency from assigning a high confidence rating to DirectViz’s oral presentation.

approach for performing the requirement. Instead, the non-cost/price portion of offerors' proposals was comprised of prior experience, key personnel resumes, proposed betterments, and oral presentations responding to scenario-based problems. TOPR at 9-18. With respect to the assessment of cost realism, the solicitation set out the following specific methodology:

The Government's objective for cost realism is to utilize Economic Research Institute's [(ERI)] Salary Assessor tool unburdened hourly rates using North American Industry Classification System (NAICS) code 541519 using Tucson, Arizona locality based on the years of experience proposed for that ERI labor category at the 50th Percentile for each Offeror for direct rate [Most Probable Cost] adjustments for evaluation purposes for the Labor Categories specified in Attachment V GCC Cost WorkBook. Offerors are cautioned that proposing unburdened hourly rates less than the 50th Percentile (ERI Survey Mean Hourly Salary) using NAICS 541519 for Tucson, Arizona may be determined high risk on maintaining the current staff; may have a MPC adjustment performed; and/or may be determined unrealistic and ineligible based on Government discretion.

Id. at 21.

As an initial matter, we find no merit to the protester's argument that the oral presentations constituted the offerors' unique technical approaches that the agency was required to consider in its cost realism analysis. In this regard, we note that offerors were required to prepare their oral presentations "based on the questions and problem statements received in person two hours before the oral presentation." TOPR at 16. Although offerors were instructed to "be prepared to discuss their solutions to the questions and problem statements received," the solicitation did not require offerors to present their technical approaches for performing the overall requirement. See *id.* Thus, nothing in the solicitation informed offerors that the content of their oral presentations would be considered their unique technical approach upon which the agency would base any cost-realism adjustments made.

Moreover, we note that the protester does not challenge the solicitation's stated methodology of using ERI labor rates for purposes of the cost realism analysis, nor does the protester point to any error in the agency's extensive cost realism analysis using those rates. See *generally*, AR, Tab 56, Cost Evaluation Report. Instead, the protester generally avers that "[i]f the Agency performed the required analysis" of considering offerors' unique technical approaches, "it likely would have adjusted Peraton's proposed costs upward or, alternatively, adjusted [DirectViz's] proposed costs downward, thereby narrowing or eliminating Peraton's limited 0.3 percent cost advantage." Protest at 65. The protester, however, fails to specifically allege any particular aspect of its own--or the awardee's--unique technical approach that should have resulted in an adjustment of proposed costs. See Protest at 64-66; Comments & 2nd Supp. Protest at 37-39. Therefore, we dismiss this ground for failure to state a

sufficient factual or legal basis of protest. 4 C.F.R. § 21.5(f); see *Midwest Tube Fabricators, Inc.*, B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3 (explaining that our Bid Protest Regulations “contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action”).

In addition, we find that the solicitation clearly advised offerors of the methodology by which the agency planned to evaluate cost realism in the absence of a technical approach submission. To the extent the protester argues that the agency’s cost realism analysis should have included more--such as requiring the submission of technical approach proposals--we find such arguments to be untimely. Our Bid Protest Regulations contain strict rules for the timely submission of protests and our timeliness rules specifically require that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial proposals be filed before that time. 4 C.F.R. § 21.2(a)(1); see *Quadrant Training Sols., JV*, B-422339, May 7, 2024, 2024 CPD ¶ 116 at 7. Since DirectViz did not challenge these terms before the initial closing date for proposals, any such challenge now would be untimely.

CONCLUSION AND RECOMMENDATION

For the reasons discussed above, we conclude that the agency’s OCI evaluation of Peraton’s proposal was unreasonable. Competitive prejudice is an essential element of a viable protest, and we will only sustain a protest where the protester demonstrates that, but for the agency’s actions, it would have had a substantial chance of receiving the award. *OGSystems, LLC*, B-417026 *et al.*, Jan. 22, 2019, 2019 CPD ¶ 66 at 18. Here, in light of the agency’s unreasonable OCI review, we find that DirectViz has established the requisite competitive prejudice as the offeror next in line for award in the event Peraton is disqualified due to an unmitigated OCI.

We recommend that the agency, consistent with our decision, meaningfully consider, evaluate, and document its findings about whether Peraton possesses an OCI arising from its performance of the ARCYBER task order. In the event the agency identifies an OCI, it should either determine what actions would be appropriate to avoid, neutralize or mitigate the identified OCI, or determine that a waiver of the identified OCI would be appropriate. We also recommend that the protester be reimbursed for its costs of filing and pursuing the protest, including reasonable attorneys’ fees. 4 C.F.R. § 21.8(d). The protester’s certified claims for such costs, detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f).

The protest is sustained.

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General Counsel