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Decision

Matter of: 1st SBC Solutions, LLC

File: B-423172.4; B-423172.5

Date: August 1, 2025

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DIGEST

1. Protest that the agency failed to conduct meaningful discussions during corrective action is denied where the protester has not demonstrated a reasonable possibility of competitive prejudice.
2. Protest that the agency relaxed a material solicitation requirement for the awardee is denied where the solicitation did not advise that noncompliance with instructions could result in rejection of a proposal and the protester has not otherwise demonstrated how it would have altered its proposal to its competitive advantage had it known that the agency would waive a requirement for strict compliance with the solicitation's instructions.
3. Protest that the agency failed to conduct a reasonable price realism analysis is denied where the record demonstrates that the agency evaluated proposals for price realism reasonably and in accordance with the solicitation's terms.
4. Protest that the agency departed from the solicitation's terms in evaluating a past performance reference is denied where the protester cannot demonstrate a reasonable possibility of competitive prejudice.

DECISION

1st SBC Solutions, LLC, an 8(a)¹ small business of Leesburg, Virginia, protests the issuance of a task order to Agovx LLC, an 8(a) small business of Bethesda, Maryland, under request for proposals (RFP) No. 2032H5-24-R-00013, issued by the Department of the Treasury, Internal Revenue Service, for information technology services support. The protester contends that the agency failed to engage in meaningful discussions with the protester; unreasonably accepted Agovx's proposal despite noncompliance with the RFP's requirements; failed to conduct a reasonable price realism analysis of Agovx's proposal; and improperly evaluated Agovx's proposal under the past performance factor.

We deny the protest.

BACKGROUND

Pursuant to FAR subpart 16.5, the agency issued the RFP *via* the General Services Administration's (GSA) eBuy website on September 18, 2024, to firms holding GSA 8(a) Streamlined Technology Acquisition Resource for Services (STARS) III governmentwide acquisition contracts. Contracting Officer's Statement (COS) at 1-2; Agency Report (AR), Tab F.1.1, Conformed RFP at 2, 101. The RFP, which the agency amended twice, sought proposals for services in support of the management and delivery of the agency's enterprise network's data and voice services. COS at 1-2; Conformed RFP at 5.

The RFP contemplated issuance of a single fixed-price task order with cost-reimbursable line items for travel, a 1-year base period of performance, four 1-year options, and one additional 6-month option. Conformed RFP at 2-3, 47-48. The RFP stated that the agency would make its source selection decision on a best-value tradeoff basis, considering four factors: technical approach; management approach; past performance; and price. *Id.* at 2, 111. The technical approach factor was more important than the management approach factor, which was more important than the past performance factor. *Id.* at 111. All of the non-price factors, when combined, were more important than price. *Id.*

Relevant to the protester's allegations, the RFP's instructions for the technical approach factor required offerors to submit résumés for key personnel, as well as signed letters of intent for individuals who were not currently employed by the offeror or a proposed subcontractor. *Id.* at 105. Paragraph L.3.2 of the RFP's instructions further provided that "[a]ny change in proposed key personnel prior to award being made requires that

¹ Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a), authorizes the Small Business Administration to enter into contracts with government agencies and to arrange for performance through subcontracts with socially and economically disadvantaged small business concerns. Federal Acquisition Regulation (FAR) 19.800. This program is commonly referred to as the 8(a) program.

the [o]fferor shall notify the [c]ontracting [o]fficer immediately and such change may result in rejection of the [p]roposal as [u]nacceptable.” *Id.*

With respect to the past performance factor, the RFP’s instructions directed offerors to submit information regarding three contracts performed within the last three years by the offeror or a proposed major subcontractor, defined as “any entity proposed to perform 30 [percent] or more of the total proposed contract value[.]” *Id.* at 106. The agency would evaluate proposals under the past performance factor using the following adjectival ratings and definitions:

Rating	Description
Excellent	Highly relevant past/present performance record managing contracts/task orders similar in size, scope, and complexity to that contemplated by the solicitation. Little or no potential risk exists for disruption of schedule, increase in cost, or degradation of performance based on the offeror’s past performance.
Good	Relevant past/present performance record managing contracts/task orders similar in size, scope, and complexity to that contemplated by the solicitation. Minimal potential risk exists for disruption of schedule, increase in cost, or degradation of performance based on the offeror’s past performance.
Satisfactory	Relevant past/present performance record managing contracts/task orders similar in size, scope, and complexity to that contemplated by the solicitation. Some potential risk exists for disruption of schedule, increase in cost, or degradation of performance based on the offeror’s past performance.
Unsatisfactory	Highly relevant or relevant past/present performance may exist; however, significant potential risk exists for disruption of schedule, increase in cost, or degradation of performance based on the offeror’s past performance.
Neutral	No record of relevant past/present performance exists, or relevant past/present performance history is not available. There is no expectation of either successful or unsuccessful performance based on the offeror’s past performance record.

Id. at 113.

To arrive at the fixed prices to be proposed for the performance work statement (PWS) tasks making up the order’s line items, the RFP instructed offerors to complete a price sheet. *Id.* at 108; see also AR, Tab F.1.2, RFP attach. 3, Price Sheet. Completion of the price sheet required offerors to provide information including labor hours, labor categories, and labor rates. Conformed RFP at 108. That information then would be used to calculate the total proposed price for each line item. Thus, for example, the RFP’s first line item was for tasks 2 through 20 of the PWS, which was to be proposed as a single fixed price. *Id.* at 2. Using the price sheet, offerors were to propose their own STARS III labor categories--aligning them with labor categories listed in the RFP--

and the number of hours for each, as well as associated labor rates, to complete those tasks. See AR, Tab F.1.2, RFP attach. 3, Price Sheet at Cost Price Summary Sheet. The total of those figures would make up the fixed price proposed for the first line item. See *id.* In addition, the RFP's instructions further directed offerors to provide "[i]nformation including the name, title, and actual hourly rate . . . for each individual proposed[.]" Conformed RFP at 108. To that end, the price sheet included fields headed "RFP Labor Category," (LCAT) "Employee Name," "STAR[S] III Labor Category," "Base Hours," and "Base Labor Rate." AR, Tab F.1.2, RFP attach. 3, Price Sheet at Cost Price Summary Sheet, LCAT and Rates Sheet.

With respect to the evaluation of proposed prices, the RFP included the following:

The cost/price evaluation shall also include an evaluation of the [o]fferor's price for the purpose of assessing the risk inherent in the [o]fferor's approach. Proposals may result in a determination of unacceptability or lower evaluation, if they are (1) indicative of failure to comprehend the complexity and risk associated with the solicitation requirements; (2) reflective of a lack of competence; or (3) indicate an inherent performance or cost risk weakness in the approach.

Conformed RFP at 114.

The agency received 14 timely proposals in response to the RFP. COS at 3. Following evaluation, the agency issued a task order to Agovx on February 19, 2025. *Id.* The protester challenged that source selection decision in a protest filed with our Office, alleging that the agency conducted an unreasonable price realism analysis of Agovx's proposed price, unreasonably evaluated the protester's proposal under the technical approach factor, unreasonably evaluated proposals under the past performance factor, and made an unreasonable best-value tradeoff determination. *1st SBC So/s., LLC*, B-423172.2, B-423172.3, Mar. 24, 2025 (unpublished decision). The protester further alleged that Agovx failed to notify the contracting officer that two of its key personnel had become unavailable during the competition. *Id.* Thereafter, the agency notified us that it intended to take corrective action, stating that the agency would, at a minimum, reevaluate proposals and create a new technical evaluation report, after which it would conduct a new best-value tradeoff and cancel awards or make new awards as appropriate, and that it reserved the right to take any additional corrective action deemed necessary to address any issues discovered in its review of the procurement. *Id.* We then dismissed the protest as academic. *Id.*

As part of its corrective action, the agency requested that offerors verify if the key personnel in their proposals remained unchanged, and stated that if those individuals were no longer available, the offerors were to submit information for replacement key personnel consistent with paragraph L.3.2 of the RFP. COS at 3. The protester responded that its key personnel remained available, while Agovx timely submitted revised key personnel information. *Id.* at 4; AR, Tab I.1, Emails with 1st SBC at 1; Tab I.2, Emails with Agovx at 1.

The agency then reevaluated proposals, including Agovx's substituted key personnel, resulting in the following ratings for the proposals submitted by the protester and Agovx:

	1st SBC	Agovx
TECHNICAL APPROACH	Excellent	Excellent
MANAGEMENT APPROACH	Excellent	Excellent
PAST PERFORMANCE	Excellent	Good
TOTAL EVALUATED PRICE	\$66,169,381	\$49,145,375

COS at 8; AR, Tab H.3, Source Selection Decision Document (SSDD) at 12; Tab H.4, Price Analysis Report at 5.

The agency concluded that these two proposals were equal under the technical approach and management approach factors, finding that they “demonstrate[d] a similar level of benefit their approaches will provide to the [g]overnment[.]” and anticipating “for both the likelihood for success with little to no [g]overnment intervention[.]” AR, Tab H.3, SSDD at 14, 15. The agency further concluded that the protester’s proposal was superior under the past performance factor, noting that “[t]he major difference . . . is that [1st SBC is] the incumbent, which shows [it has] already performed the requirement and [was] successful.” *Id.* at 16. The agency noted that “less risk is posed by 1st SBC . . . because more information is known regarding the quality of [its] past performance; it is evident that [it] excelled in [its] past performance.” *Id.*

Although the agency recognized the technical superiority of the protester’s proposal by virtue of its advantage under the past performance factor, the agency concluded that its technical advantages did not merit the associated price premium, noting that Agovx “provides a robust solution at a price that is significantly lower by 25.68 [percent].”² *Id.* at 17. The agency pointed to the proposals’ equal merits under the technical approach and management approach factors, which were more important than the past performance factor under the RFP’s weighting, in concluding that there were no “significant benefits to justify the price premium associated with 1st SBC[’s] proposal.” *Id.* The agency therefore selected Agovx for receipt of the task order. *Id.* at 18.

² This percentage calculation appears to be based upon the price difference between the two proposals without considering the price of the six-month option to extend services under FAR clause 52.217-8, which the RFP stated would be calculated as 50 percent of the proposed price for the fourth option period. Conformed RFP at 114. Using the total evaluated price--which includes the price for that option--Agovx’s price is 25.73 percent lower than the protester’s. See AR, Tab H.4, Price Analysis Report at 5.

The agency issued notices of its selection decision to the offerors on May 1, 2025. COS at 4. This protest followed.³

DISCUSSION

The protester raises four challenges to the agency's source selection decision. First, the protester contends that, by requesting information only regarding key personnel, the agency failed to engage in meaningful discussions with the protester, thereby failing to ensure that exchanges with offerors were fair. Next, the protester argues that the agency improperly accepted Agovx's proposal because its price proposal failed to identify the names of proposed personnel. Third, the protester alleges that the agency failed to conduct a price realism analysis of Agovx's proposal. Finally, the protester contends that the agency improperly evaluated one of Agovx's past performance references, because it was performed by a subcontractor proposed to perform less than 30 percent of the total proposed contract value.⁴ For the reasons discussed below, we discern no basis on which to sustain the protest.

Failure to Engage in Meaningful Discussions

As discussed above, as part of corrective action taken in response to the protester's previous protest alleging, in part, that Agovx had failed to notify the contracting officer that two of its key personnel had become unavailable, the agency requested that offerors confirm the continued availability of their proposed key personnel. If key personnel had become unavailable, the agency permitted offerors to submit revised key personnel.

The protester argues that by limiting exchanges to the subject of key personnel, the agency failed to engage in meaningful discussions with the protester, as the agency did not afford the protester an opportunity to improve its proposal, but, rather, permitted only Agovx to remedy a deficiency in its proposal arising out of the unavailability of its originally-proposed key personnel. Protest at 18; Comments & Supp. Protest at 9-11. As a result, the protester contends, "[i]t was patently unfair to allow [Agovx] to cure the deficiency in its proposal without allowing any other offeror any opportunity to meaningfully enhance their proposals." Comments & Supp. Protest at 10. The agency responds that it reasonably limited the scope of exchanges to remedy the issue of key

³ As the total evaluated cost/price of the task order at issue here exceeds \$10 million, this procurement is within our jurisdiction to hear protests of task orders placed under civilian agency indefinite-delivery, indefinite-quantity contracts. 41 U.S.C. § 4106(f)(1)(B).

⁴ The protester initially alleged that the agency unreasonably evaluated the protester's proposal under the technical approach factor, unreasonably evaluated proposals under the past performance factor based on other alleged errors, and conducted an unreasonable best-value tradeoff analysis. See Protest at 22-36. The protester subsequently withdrew those allegations. See Comments & Supp. Protest at 3 n.3.

personnel availability raised in the protester's prior protest. Memorandum of Law (MOL) at 5-6.

Although the regulations concerning discussions in procurements conducted pursuant to FAR part 15 do not, as a general rule, govern task order competitions conducted pursuant to FAR subpart 16.5, when an agency engages in exchanges with vendors in task order competitions, such exchanges must be fair. *Tetra Tech, Inc.*, B-416861.2, B-416861.3, May 22, 2019, 2019 CPD ¶ 196 at 8; *AT&T Corp.*, B-414886 *et al.*, Oct. 5, 2017, 2017 CPD ¶ 330 at 4; *CGI Fed. Inc.*, B-403570 *et al.*, Nov. 5, 2010, 2011 CPD ¶ 32 at 9. Our analysis regarding fairness will, in large part, reflect the standards applicable to negotiated procurements in FAR part 15. *Technatomy Corp.*, B-411583, Sept. 4, 2015, 2015 CPD ¶ 282 at 7.

We deny the allegation that the agency failed to engage in fair exchanges because, even assuming for the sake of argument that the agency unreasonably limited the scope of discussions to key personnel, we conclude that there is no reasonable possibility that the protester was prejudiced by the agency's actions. Competitive prejudice is an essential element of every viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest, even if deficiencies in the procurement are found. *Deloitte Consulting, LLP*, B-422094, B-422094.2, Jan. 18, 2024, 2024 CPD ¶ 36 at 10.

Under the negotiated procurement provisions of FAR part 15, discussions, when held, must identify, at a minimum, deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond. *DevTech Sys., Inc.*, B-418273.3, B-418273.4, Dec. 22, 2020, 2021 CPD ¶ 2 at 8; FAR 15.306(d)(3). As the agency points out--and the protester does not refute--the protester's proposal was not assigned any significant weaknesses or deficiencies, nor did the agency's evaluation consider adverse past performance information to which the protester had not had an opportunity to respond. MOL at 5. Thus, the protester has not identified any matters the agency would have been required to raise in more expansive exchanges.⁵ Indeed, in that regard, the protester's proposal received the highest possible ratings under the non-price factors, based on the assignment of multiple strengths and no weaknesses under each of those factors. See AR, Tab H.3, SSDD at 12; Tab H.1, 1st SBC Technical Evaluation Report at 6-13. Additionally, its price was evaluated as reasonable. See, e.g., *NOVA Dine, LLC*, B-420454, B-420454.2, Apr. 15, 2022, 2022 CPD ¶ 101 at 6 ("[T]here is no requirement for an agency to inform an offeror during discussions that its price may be too high, where the offeror's price is not

⁵ The protester also does not argue that the agency unreasonably limited discussions to key personnel revisions because of the effect of those revisions on other parts of its proposal. Because the protester does not argue that the limitation on proposal revisions was unreasonable due to the impact on other parts of its proposal, we find no basis to conclude that the agency was required to permit offerors to submit revisions to other parts of their proposals. See *DevTech*, *supra* at 10 n.9.

considered excessive or unreasonable.”). In the context of a FAR part 16 procurement, the protester has not established that its competitive position would have improved through discussions insofar as its proposal was evaluated as having no weaknesses, significant weaknesses, or deficiencies. See, e.g., *Ernst & Young, LLP*, B-422469, B-422469.2, July 3, 2024, 2024 CPD ¶ 176 at 12 (finding no competitive prejudice where agency allegedly conducted discussions only with the awardee where the protester’s quotation was evaluated as having no weaknesses, significant weaknesses, or deficiencies, and, therefore, our Office “fail[ed] to see what, if anything, would have been discussed”).

Furthermore, the protester has not reasonably identified how it would have revised its proposal to improve its competitive standing if the agency had not limited exchanges to the subject of key personnel. The protest states only that the agency’s exchanges “did not . . . allow [1st SBC] to improve its proposal[.]” Protest at 18. The protester’s comments provide only a generalized statement that the protester “could have enhanced its proposal by improving its technical solution and lowering its price[.]” Comments & Supp. Protest at 12. As we have stated, however, unspecific statements that the protester would have revised its proposal and reduced its price are insufficient to establish a presumption of prejudice. *Ernst & Young, supra* at 13; *Deloitte, supra* at 10. We therefore deny this ground of protest.

Noncompliance with the RFP’s Requirements

Next, the protester contends that the agency unreasonably accepted Agovx’s proposal, arguing that the proposal did not comply with the RFP’s requirements. Comments & Supp. Protest at 13; Supp. Comments at 3-5. Specifically, the protester points to the RFP’s instructions with respect to price, which directed offerors to provide “[i]nformation including the name, title, and actual hourly rate . . . for each individual proposed[.]” and further stated that “staff proposed in the technical submittal must be the same staff proposed in the cost submittal[.]” Comments & Supp. Protest at 13 (citing Conformed RFP at 108). The protester points to the fact that Agovx’s price sheet listed “TBD” in the “Employee Name” field for all positions, thereby failing to satisfy those instructions because none of the names of Agovx’s key personnel--whose résumés were required to be included in the technical approach volume of Agovx’s proposal and therefore were not unknown--were listed in Agovx’s price sheet. *Id.* (citing AR, Tab E.1.3, Agovx Price Sheet); Supp. Comments at 4. The agency responds that it reasonably found Agovx’s proposal to be compliant, as the price sheet’s instructions permitted offerors to input “TBD” into the “Employee Name” field if the identity of the employee was unknown, and, furthermore, that the protester cannot demonstrate prejudice because the protester also input “TBD” in several instances in that field. Supp. MOL at 3-5.

We deny this ground of protest for several reasons. First, requirements provided in the instruction section of a solicitation are not the same as evaluation criteria provided in the evaluation section; rather than establishing minimum evaluation standards, the instructions generally provide guidance to assist offerors in preparing and organizing proposals. *Peraton Inc.*, B-421839, B-421839.2, Nov. 3, 2023, 2023 CPD ¶ 251 at 9.

Here, the RFP's instructions stated that the staff proposed under the technical approach factor must be the same as those listed under the price factor, and while the RFP's evaluation section did state that the agency would "evaluate the price [p]roposal to determine if the total overall price . . . [is] consistent with the [o]fferor's technical [p]roposal," Conformed RFP at 113, it did not advise offerors that their proposals could be rejected for inconsistencies between the price and technical volumes of their proposals. We therefore find no basis to conclude that Agovx's proposal took exception to a material solicitation requirement.⁶ *Cf. Peraton, supra* at 8-12 (where instructions required offerors to ensure consistency between their cost and technical proposals, but solicitation did not advise that proposals could be rejected for inconsistencies between those proposals, agency's rejection of protester's proposal on that basis was unreasonable; protest nevertheless was denied for lack of competitive prejudice).

Second, we disagree with the protester that the RFP's instruction that "staff proposed in the technical submittal must be the same staff proposed in the cost submittal" concerned consistency with respect to individuals' names. As the agency points out, that direction is part of a two-sentence bullet item and must be read in conjunction with the item's second sentence, which states that "[i]f an [o]fferor's proposed labor category differs in name from those listed in [s]ection C [of the] PWS[,] a chart shall be included which identifies how these categories correspond to the ones listed in the solicitation." See Supp. MOL at 4 (citing Conformed RFP at 108-109). Thus, that direction is appropriately understood as requiring consistency with respect to labor categories, rather than individual names.

Furthermore, the protester has not demonstrated competitive prejudice. Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was competitively prejudiced by the agency's actions; that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. *NTT Data Servs. Fed. Gov't, LLC*, B-420274, B-420274.2, Jan. 18, 2022, 2022 CPD ¶ 69 at 9. Even in circumstances where the agency was unreasonable in accepting the awardee's proposal, a protester still must show that it was competitively prejudiced by a waiver of solicitation requirements in favor of the awardee. *Id.* To demonstrate prejudice from the waiver or relaxation of solicitation requirements, a protester must show that it would have altered its proposal to its competitive advantage, or that the agency did not apply a similar waiver to the protester's proposal. *Id.* In cases where the protester argues that an agency waived a certain requirement, prejudice does not mean, had the agency failed to waive the requirement, the awardee would have been unsuccessful. *Acuity Int'l, LLC*, B-422420.4, B-422420.5, Dec. 20, 2024, 2025 CPD ¶ 10 at 9. Rather, the pertinent question is whether the protester would have submitted a different offer that would have

⁶ We further note that Agovx's use of "TBD" in completing its price sheet did not deprive the agency of information necessary to evaluate Agovx's proposed key personnel; as discussed above, the RFP required submission of key personnel résumés under the technical approach factor.

had a reasonable possibility of being selected for award had it known that the requirement would be waived. *Id.*

Here, to whatever extent the agency relaxed a solicitation requirement to provide individuals' names in completing the price sheet, the protester has not demonstrated how it would have altered its proposal to its competitive advantage. In that regard, the protester has not alleged how it might have improved its proposal if it had understood that it could have listed "TBD" rather than individual names for all positions.⁷ Consequently, the protester has not demonstrated a reasonable possibility that it was competitively prejudiced.

Price Realism

The protester alleges that the agency failed to conduct a proper price realism analysis of Agovx's proposal, contending that the labor rates supporting Agovx's proposed price demonstrate a lack of understanding of the requirement and thereby raise a serious risk of non-performance. Protest at 19-21; Comments & Supp. Protest at 3-9. The agency responds that the RFP did not require a price realism analysis, but that its price evaluation nevertheless considered risk reasonably and consistently with the RFP's terms. MOL at 6-12. We agree with the protester that the RFP required the agency to conduct a price realism analysis but conclude that the agency's evaluation satisfied that requirement.

As a general matter, when awarding a fixed-price order or contract, an agency is only required to determine whether offered prices are fair and reasonable. FAR 15.402(a). An agency's concern in making a price reasonableness determination focuses primarily on whether the offered prices are higher than warranted, as opposed to lower. *Facility Servs. Mgmt., Inc.*, B-420102.3, Mar. 29, 2022, 2022 CPD ¶ 93 at 6. While an agency may conduct a price realism analysis in awarding a fixed-price contract or task order for the limited purpose of assessing whether an offeror's or vendor's low price reflects a lack of technical understanding or risk, offerors or vendors must be advised that the agency will conduct such an analysis. FAR 15.404-1(d)(3); *Facility Servs.*, *supra*. If the solicitation does not contain an express price realism provision, we will conclude that a solicitation nevertheless contemplates a price realism evaluation only where the solicitation: (1) states that the agency will review prices to determine whether they are so low that they reflect a lack of technical understanding; and (2) states that a proposal can be rejected or assessed technical risk for offering low prices. *Facility Servs.*, *supra* at 6-7.

We conclude that the RFP here satisfies both of those conditions. With respect to the first, the RFP stated that "[t]he cost/price evaluation shall also include an evaluation of the [o]fferor's price for the purpose of assessing the risk inherent in the [o]fferor's

⁷ The protester's proposal listed "TBD" in the "Employee Name" field in some instances, but not with respect to any key personnel. See AR, Tab D.1.6, 1st SBC Price Sheet at LCAT and Rates Sheet.

approach.” Conformed RFP at 114. The use of “shall” in that sentence rather than “may” distinguishes the RFP here from circumstances where we have concluded that a solicitation permitted, but did not require, a price realism analysis. *Compare id. with Leidos Inc.; Booz Allen Hamilton Inc.*, B-421524 *et al.*, June 20, 2023, 2023 CPD ¶ 157 at 6, 8 (statement that “[t]he price evaluation may include an evaluation of the [vendor’s] price for the purpose of assessing the risk inherent in the [vendor’s] approach” permitted but did not require price realism analysis). With respect to the second condition, the RFP’s next sentence stated that “[p]roposals may result in a determination of unacceptability or lower evaluation, if they are (1) indicative of failure to comprehend the complexity and risk associated with the solicitation requirements; (2) reflective of a lack of competence; or (3) indicate an inherent performance or cost risk weakness in the approach.” Conformed RFP at 114. Thus, the RFP advised offerors that a proposal could be rejected--*i.e.*, determined unacceptable--or assessed technical risk--*i.e.*, given a lower evaluation--for offering low prices. Consequently, the RFP required the agency to conduct a price realism evaluation.

While the RFP required the agency to conduct a price realism evaluation, we further conclude that the record reflects the agency reasonably conducted such an evaluation in accordance with the RFP’s terms. As we have stated, analyzing whether an offeror’s fixed price is so low that it reflects a lack of understanding of solicitation requirements is the crux of a price realism evaluation. *Epic Sys., Inc.*, B-418104, B-418104.2, Jan. 2, 2020, 2020 CPD ¶ 1 at 6. The nature and extent of an agency’s price realism analysis are matters within the agency’s discretion. *Star Mountain, Inc.*, B-285883, Oct. 25, 2000, 2000 CPD ¶ 189 at 6. Our review of a price realism analysis is limited to determining whether it was reasonable and consistent with the terms of the solicitation. *Smiths Detection, Inc.; American Sci. and Eng’g, Inc.*, B-402168.4 *et al.*, Feb. 9, 2011, 2011 CPD ¶ 39 at 17.

As discussed above, offerors were to propose fixed prices to perform the tasks described in the PWS. The RFP further required offerors to provide information showing the basis for those fixed prices. To that end, offerors were to make their own determinations about the labor categories and number of labor hours to perform the PWS tasks and set forth that information on a price sheet, along with associated labor rates. Those figures, when totaled, made up the fixed prices for the line items corresponding to the PWS tasks.

The record reflects that the agency developed an independent government cost estimate (IGCE) for the requirement. AR, Tab H.4, Price Analysis Report at 3. All offerors, including the protester and Agovx, proposed prices that fell below the IGCE. *Id.* Using the information provided in the offerors’ price proposals, the agency compared the proposed labor hours among proposals, as well as against those used to generate the IGCE. *Id.* at 4; AR, Tab H.3, SSDD at 9. All offerors but one, again including the protester and Agovx, proposed fewer labor hours than that used in preparing the IGCE. *Id.* While both the protester and Agovx proposed fewer labor hours than the agency estimated was necessary, Agovx proposed more labor hours than the protester. *Id.*

In evaluating proposals, the agency concluded that the IGCE had overestimated the number of hours required--and the cost to the agency--to perform the requirements. AR, Tab H.1, 1st SBC Technical Evaluation at 14; Tab H.2, Agovx Technical Evaluation at 13; Tab H.3, SSDD at 9. As the contracting officer noted, the IGCE was based on outdated information, as the agency had "streamlined . . . support services including consolidation of old tools/platforms and migration to new platforms, which will result [in a] lower total number [of] hours needed for the new award." AR, Tab H.3, SSDD at 9. In view of that updated understanding, the agency reviewed the labor mix and associated hours proposed by the protester and Agovx, finding that both had proposed an appropriate labor mix and reasonable number of hours to complete the requirements. AR, Tab H.1, 1st SBC Technical Evaluation at 13-14; Tab H.2, Agovx Technical Evaluation at 13-14.

As noted above, Agovx proposed more labor hours but a lower price than the protester. The agency's evaluation reflects that Agovx's lower price was attributable to proposing greater discounts from its STARS III labor rates than the protester. AR, Tab H.4, Price Analysis Report at 4; AR, Tab H.3, SSDD at 10. Thus, Agovx's low price did not result from proposing fewer resources to accomplish the agency's requirements, but rather from its willingness to more steeply discount its established contract labor rates.

The FAR recognizes a number of price analysis techniques that may be used to determine whether prices are reasonable and realistic, including a comparison of proposed prices with each other and with an IGCE. See FAR 15.404-1(b)(2)(i), (ii), (v); *Epic Sys.*, *supra* at 6; *Islandwide Landscaping, Inc.*, B-293018, Dec. 24, 2003, 2004 CPD ¶ 9 at 2. While the RFP here did not specify the method the agency was to use to conduct the price realism evaluation, as discussed above, the agency employed price competition, comparison of proposals, and comparison with an IGCE in assessing the risk posed by offerors' proposed pricing. In that regard, the agency examined Agovx's proposed labor mix and number of hours--which was greater than that proposed by the protester--and determined that they were reasonable and appropriate to perform the PWS requirements.⁸ While Agovx proposed a lower price than the protester, that was attributable to greater discounts on its STARS III labor rates, not a failure to understand and propose the resources necessary for successful performance. In the context of this fixed-price procurement, the agency thus reasonably concluded that Agovx's proposed price was realistic. See *Epic Sys.*, *supra* at 6-7 (agency reasonably concluded proposed price was realistic where the offeror's labor mix and staffing plan were technically acceptable, and lower price was attributable to discounted labor rates).

⁸ We further note that the record reflects that the agency substantively considered the risk presented by the labor mix and number of labor hours set forth in offerors' price proposals, as the agency concluded that at least one offeror had proposed a sufficiently low number of labor hours as to "pose risks that [it] may not fully understand the level of effort overall of the requirement or need additional resources through the life of the [task order] that are not accounted for in the proposal." AR, Tab H.3, SSDD at 10.

The protester contends that the agency's evaluation was "a deficient [price realism analysis] at best[.]" and that Agovx's discounted labor rates "suggest[] that [Agovx] intends to pay . . . incumbent key employees less than two-thirds of their current compensation." Comments & Supp. Protest at 5, 8. The protester argues that Agovx's proposed rates thus demonstrate a lack of understanding of the requirements and risk of non-performance. *Id.* at 9. The depth of an agency's price realism evaluation, however, is again a matter within the agency's discretion. *Epic Sys.*, *supra* at 7. As our Office has consistently explained, a protester's disagreement with the nature and extent of the agency's price realism methodology, by itself, does not provide a basis on which to sustain a protest. See *BillSmart Sols., LLC*, B-413272.4, B-413272.5, Oct. 23, 2017, 2017 CPD ¶ 325 at 10-11.

Although the protester ultimately believes that a more detailed realism assessment was necessary, as noted above, the extent of a price realism analysis is within the sound exercise of the agency's discretion, and agencies are free to use a number of techniques in assessing price realism. *Smiths Detection*, *supra* at 17. Moreover, it does not necessarily follow that Agovx's discounted labor rates indicate that Agovx does not intend to pay the compensation necessary to provide the solution it proposed to the agency. Indeed, nothing about an obligation to review prices for realism bars an offeror from proposing--and an agency from reasonably deciding to accept--a below-cost offer. *Optex Sys., Inc.*, B-408591, Oct. 30, 2013, 2013 CPD ¶ 244 at 5-6; see also *HBC Mgmt. Servs., Inc.*, B-408885.2, May 9, 2014, 2014 CPD ¶ 149 at 5 (where fixed-price procurement required price realism analysis, agency was not obligated to verify feasibility of proposal to provide program manager at no cost). On this record, we find no basis on which to sustain the protest.

Past Performance

Finally, the protester alleges that the agency improperly considered Agovx's second past performance reference, as it was performed by a subcontractor proposed to perform less than 30 percent of the proposed task order value. Comments & Supp. Protest at 12; Supp. Comments at 2-3. Had the agency disregarded that reference, the protester contends, Agovx's "past performance rating would have reasonably been downgraded from [g]ood to [s]atisfactory[.]" and that the protester's proposal "would have been found to be even more technically superior[.]" Comments & Supp. Protest at 12. The agency concedes that the subcontractor's proportion of Agovx's proposed task order value was 29.45 percent, less than a percentage point below the 30 percent threshold set forth in the RFP's instructions for the past performance factor but argues that it reasonably considered the past performance reference given that Agovx proposed the subcontractor to perform a significant portion of the work. Supp. MOL at 2. The agency further contends that the protester cannot demonstrate that it was prejudiced by its consideration of the reference, as Agovx's proposal satisfied the RFP's criteria for a rating of good under the past performance factor even if the reference is not considered. *Id.* at 2-3. We conclude that, to the extent the agency improperly

considered the reference, the protester cannot demonstrate a reasonable possibility of prejudice.

Competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest. *Millennium Eng'g and Integration Co.*, B-417359.4, B-417359.5, Dec. 3, 2019, 2019 CPD ¶ 414 at 9. Where the record establishes no reasonable possibility of prejudice, we will not sustain a protest even if defects in the procurement were found. *ICI Servs. Corp.*, B-418255.5, B-418255.6, Oct. 13, 2021, 2021 CPD ¶ 342 at 13.

Agovx's proposal included three past performance references, one of which was performed by a proposed subcontractor. See AR, Tab E.1.1, Agovx Past Performance Volume. The agency's evaluation of the two references performed by Agovx--which the protester does not challenge--concluded that they were "highly relevant" and "very similar" in scope to the solicited requirement, discussing particular performance elements the agency found similar to those described in the PWS. AR, Tab H.2, Agovx Technical Evaluation Report at 11-12. Additionally, the agency noted that both of the referenced efforts had a 5-year period of performance, similar to this requirement, and had values of \$54 million and \$41 million, respectively, which are similar to Agovx's total evaluated price of approximately \$49 million. *Id.*

Thus, even in the absence of the reference performed by the proposed subcontractor, the record supports the agency's assignment of a rating of good to Agovx's proposal under the past performance factor. As set forth in the RFP, a rating of good corresponded to a record of "[r]elevant past/present performance . . . managing contracts/task orders similar in size, scope, and complexity to that contemplated by the solicitation." Conformed RFP at 113. The agency's evaluation of the similarity of the two references performed by Agovx reasonably supports a conclusion that Agovx's past performance submission, even excluding the reference performed by its proposed subcontractor, met those criteria. Similarly, Agovx's successful performance of those efforts reasonably supports the conclusion that "[m]inimal potential risk exists for disruption of schedule, increase in cost, or degradation of performance[.]" as the RFP stated was required to merit a rating of good. *Id.* The protester therefore has not demonstrated that the agency unreasonably assigned a rating of good to Agovx's proposal as a result of its consideration of the reference performed by Agovx's proposed subcontractor.

Furthermore, the agency recognized the superiority of the protester's proposal under the past performance factor. See AR, Tab H.3, SSDD at 16-17. The agency's comparison of proposals under that factor did not cite the effort performed by Agovx's proposed subcontractor in detailing the magnitude of the advantage of the protester's proposal under that factor. Additionally, as discussed above, the past performance factor was the least important of the non-price factors, and the price premium presented by the protester's proposal, as the contracting officer recognized, was substantial. See

id. at 16. In these circumstances, the protester has not demonstrated a reasonable possibility that it was prejudiced by the agency's consideration of the past performance reference performed by Agovx's proposed subcontractor.

The protest is denied.

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