



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

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Washington, DC 20548

Comptroller General
of the United States

Decision

DOCUMENT FOR PUBLIC RELEASE

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Matter of: Markon LLC

File: B-423767; B-423767.2; B-423767.3; B-423767.4

Date: December 12, 2025

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[DELETED], Esq., Erin Fazee Masini, Esq., and Joseph Anzalone, Esq., Central Intelligence Agency, for the agency.
Kenneth Kilgour, Esq., and Heather Weiner, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Allegation that the agency conducted an unreasonable cost realism evaluation is sustained where the evaluation was inconsistent with the solicitation and procurement law and regulation.
2. Allegation that the agency conducted a flawed past performance evaluation is denied where the record demonstrates that the evaluation was consistent with the solicitation and procurement law and regulation.

DECISION

Markon LLC, of Falls Church, Virginia, protests the award of a contract to Analex Corporation, doing business as Arcfield, of Chantilly, Virginia, under request for proposals (RFP) No. 56000025R0116, issued by the Central Intelligence Agency's (CIA) Acquisition and Digital Solutions Services' (ADSS) Business Enterprise (BE) for support in the areas of business operations, information technology (IT) engineering support, and BE modernization. Markon asserts that the CIA conducted unreasonable cost realism and past performance evaluations.

We sustain the protest.

BACKGROUND

The CIA issued the RFP on December 6, 2024, under the procedures of Federal Acquisition Regulation (FAR) part 15. See Agency Report (AR), Tab 4, RFP at 1. The solicitation contemplated the issuance of a single hybrid contract with cost-plus-fixed-fee services, cost-plus-fixed-fee/level of effort labor, and cost-reimbursable contract line items with a period of performance of a base year with nine 1-year options. RFP at 8-12; AR, Tab 31, RFP § L at 1. The agency would award the contract to the offeror whose proposal represented the best value to the government, considering the following factors: technical, management, past performance, security, and cost. AR, Tab 7, RFP § M at 3. The non-cost factors, when combined, were significantly more important than the cost factor. *Id.* The technical factor was significantly more important than the management factor. *Id.* The management factor was significantly more important than the past performance factor. *Id.* The security factor would be evaluated on a pass/fail basis; proposals evaluated as fail would be ineligible for award. *Id.*

The technical factor, which is relevant to the protest allegations, contained two subfactors--business operations approach and business enterprise modernization approach--the first of which was more important. *Id.* Under the business operations approach subfactor, the agency would evaluate the extent to which the offeror proposes an effective approach to executing the agency's business processes. *Id.*, *citing* AR, Tab 5, Statement of Work (SOW) para. 3.1. In particular, under this subfactor the contractor was to "provide business analytic support to the ADSS Front Office by analyzing and recommending operational strategies to optimize the [CIA]'s BE." *Id.* AR, Tab 5, SOW at 14. Under the business enterprise modernization approach subfactor, the government would "[e]valuate the extent to which the Offeror proposes an effective approach to incorporating continuous process improvements. (Ref. SOW3.3)[.]" AR, Tab 7, RFP sect. M at 3. The SOW at section 3.3 catalogued numerous contractor responsibilities under the business enterprise modernization subfactor of the technical factor. See AR, Tab 5, SOW at 28-29. The contractor would "support the [CIA] in its effort to modernize their business enterprise[.]" including "documenting the as-is state, providing continuous process improvement recommendations (digital transformation and non-technology-based solutions), and provide implementation plans." *Id.* at 28. In collaboration with the CIA's functional teams, the contractor was also required to:

- a. (U)^[1] Gain an operational understanding of how each functional team, and its associated dependences, support the BE by reviewing workflow documentation, [standard operating procedures (SOPs)], and/or process documentation.

¹ One section of the solicitation and a corresponding portion of proposals contained classified information, which was not implicated in record development. Nevertheless, portions of the record contained U (unclassified) and FOUO (for official use only) markings.

- b. (U) Leverage existing and progressive enterprise-level business system solutions when determining enhancement strategies. Explain how leveraged solutions could contribute to modernizing the BE, and how they might be implemented.
- c. (U) Evaluate and recommend detailed improvement strategies, SOPs, or other process improvements for [CIA] consideration.
- d. (U) Identify and recommend [commercial off-the-shelf], [government off-the-shelf], and “public domain” solutions that can enhance performance, improve product quality, and are cost effective and/or save development time.
- e. (U) Ensure recommended solutions align with [CIA] requirements and goals and demonstrate how improvements will result in increased efficiencies and/or cost savings.

Id. at 28-29. The government would assess strengths, weaknesses, and deficiencies at the subfactor level with ratings assigned to the subfactors and factors.² *Id.*

Under the past performance factor, the agency would evaluate the extent to which the offeror’s recent and relevant past performance provides confidence in the offeror’s ability to successfully perform program requirements “based upon that Offeror’s previous performance on efforts of similar scope, and either size or complexity.” AR, Tab 7, RFP section M at 4. The solicitation defined relevant scope as “business operations management and IT engineering support for a Federal business enterprise” and relevant complexity as “[e]fforts of a similar skill level and expertise for a Federal business enterprise.”³ *Id.* The past performance factor contained three subfactors in descending order of importance: technical performance, management, and transition. *Id.*

Under the technical performance subfactor, the CIA would evaluate an offeror’s “success in providing technical expertise in business operations and IT engineering.” *Id.* at 4. Performance of the IT engineering requirement included software development as well as systems engineering and architectural design. See AR, Tab 30, SOW at 21-24. Regarding software development, the SOW required the contractor to “develop, configure, maintain, and enhance software and/or web services.” *Id.* at 23. The contractor would be required to “[l]everage current [CIA] Enterprise solutions, where possible, and recommend changes that contribute to the quality and maintainability of the [Business Systems Enterprise (BSE)]” and to “[r]ecommend infrastructure requirements for the BSE based on capacity planning, performance, and [CIA] goals and strategies.” *Id.* Regarding systems engineering and architectural

² Section M of the RFP did not contain adjectival ratings for the technical factors or confidence ratings for the past performance factor. See *id.*

³ The solicitation defined relevant size as efforts of a similar contract value or a similar full-time equivalent (FTE) count. *Id.*

design, the SOW contained the following requirements: “[a]nalyze business functionality and provide alternative solutions for architecture and process improvements that promote integration and innovation, to include cost benefit analysis”; “[c]reate and maintain a backup and recovery strategy for the BSE”; “[p]articipate in engineering reviews, design reviews, technical exchange meetings, and working group meetings that could affect the operation and configuration of the BSE”; “[p]lan, design, and analyze the integration of new components into existing applications, systems, and/or service components, to include installing and/or removing existing integrated components”; “[e]valuate and understand [CIA] corporate IT initiatives to inform and advise [CIA] management. This shall include project-level technology roadmap planning and implementation of next-generation technology.” *Id.* at 24-25.

With regard to the cost evaluation, the solicitation advised offerors that cost would be evaluated for realism and reasonableness. *Id.* at 5-6. Regarding realism, the CIA would independently review and evaluate specific elements of each offeror’s proposed cost estimate to determine whether the estimated costs were complete and realistic for the work to be performed, reflected a clear understanding of the government’s requirements, and were consistent with the unique methods of performance set forth in the technical proposal. *Id.* The probable cost would be used for purposes of evaluation to determine the best value. *Id.* at 6.

Section L of the RFP contained two relevant instructions for the preparation of the cost volume. First, the RFP advised offerors that “[DELETED].” AR, Tab 31, RFP sect. L at 15. Second, the RFP provided:

(U) The Offeror shall include a listing of all key ground rules and assumptions that have significant impacts on the proposed costs. This includes resources required of the Government (e.g., Government-furnished equipment and property), key technical and management requirements that drive costs, whether imposed by the Government or self-imposed by the Offeror (e.g., Security). Include the nature and amount of any contingencies included in the proposed price. Offerors shall explain any cost saving measures or strategies (e.g., “juniorizing/greening” staffing strategies). If a cost savings strategy is employed in the Cost/Price volume, the Offeror shall ensure this strategy is traced to the technical/management volume, including any necessary risk Avoidance. The Offeror shall describe, in general terms, how each ground rule and assumption impact the proposed costs and identify those ground rules and assumptions that result in increased costs. The ground rules and assumptions included in this section shall track to other sections of the Cost/Price volume, and the technical management volume as appropriate. If no assumptions were made, include a statement to that effect.

Id. at 19.

As relevant to the protest, prior to the issuance of the final solicitation, the agency held “[i]ndustry one-on-one pre-bid sessions” separately with the protester and the awardee on August 2, 2024. Contracting Officer’s Statement (COS) at 4. Ten days later, on August 12, the CIA “internally documented the questions and answers (Q&A) discussed during the industry one-on-one sessions.” *Id.* The contracting officer provides the following memorialization of the oral communications with the offerors:

(U) INDUSTRY QUESTION:

(U) The draft RFP was silent on business modernization. There was minor mention of [DELETED] and no mention of [DELETED], nor low side development.

- a. (U) Will the final RFP discuss the potential sunset of [DELETED]?
- b. (U) Will additional details be provided on expected use of [DELETED]? [DELETED]?

(U) GOVERNMENT RESPONSE:

(U) The Government does not currently have a timeline for sunsetting [DELETED]. Offerors should propose an approach to address how functions will be performed/executed and not focus on the technology to be used to perform those functions.

Id. There is no indication that the agency provided its contemporaneous “internally documented” summary of the communications to the offerors. See *id.*

The CIA received proposals from Arcfield and Markon. AR, Tab 48, Source Selection Evaluation Board (SSEB) Recommendation at 1. The table below summarizes the evaluation of the two proposals:

Area	Factor	Offeror	
		Arcfield	Markon
Non-Cost	Technical	Very Good	Very Good
	Management	Exceptional	Exceptional
	Past Performance	High	Moderate
	Technical Performance Subfactor	Moderate	Moderate
	Management Subfactor	High	Moderate
	Transition Subfactor	Moderate	Satisfactory
	Security	Pass	Pass
Cost	Cost Realism	Realistic	Unrealistic
	Cost Reasonableness	Reasonable	Reasonable
	Total Proposed Cost	\$[DELETED]	\$[DELETED]
	Total Evaluated/Probable Cost	\$[DELETED]	\$[DELETED]

AR, Tab 52, Protester’s Debriefing at 23.

The agency assessed Markon's proposal two minor strengths under the technical factor. AR, Tab 41, Technical Management Evaluation Team (TMET) Report at 19-20. The first minor strength, under the business operations approach subfactor, was for the protester's proposed implementation of a "[DELETED]." *Id.* at 19. Additionally, Markon proposed "[DELETED]"⁴ [DELETED]⁵ [DELETED]." AR, Tab 41, TMET Report at 20.

The second minor strength, under the business enterprise modernization subfactor, was for a "comprehensive approach to Business Enterprise Modernization and digital transformation[.]" specifically [DELETED]." *Id.* at 20. Again, the evaluators positively noted the protester's proposed [DELETED]. See *id.* (noting that Markon's proposed approach "[DELETED]"). The TMET report did not find that Markon's proposal demonstrated a lack of understanding of the solicitation requirements. See AR, Tab 41, TMET Report at 20.

The agency's cost realism evaluation found Markon's proposed costs reasonable but unrealistic. AR, Tab 44, Cost Evaluation Team (CET) Report at 32-33. The CET did not determine that Markon could not perform its technical proposal [DELETED] in its cost proposal. See *id.* Rather, as relevant here, the CET determined that "Markon's proposal did not comply with the provided oral instructions to not base their proposed approaches on assumptions concerning [the CIA]'s efficiencies and modernization initiatives." *Id.* at 35. The CET noted that Markon's proposed efficiencies "were based on first-hand knowledge of [CIA]'s IT modernization plans," such as [DELETED], and found that "[a] probable cost adjustment was necessary to bring Markon's proposal into compliance with [CIA]'s specifications[.]" *Id.* at 36.

In making the award decision, the source selection authority (SSA) noted the agency's assignment of a rating of high confidence for past performance to Arcfield's proposal was higher than the agency's assignment of a rating of moderate confidence to Markon's proposal and that Arcfield had a lower evaluated probable cost. AR, Tab 49, Source Selection Document (SSD) at 11. The SSA also noted that the CET reasonably found Markon's proposed costs unrealistic because the protester's technical proposal failed to conform to the solicitation's requirements. *Id.* at 7 (noting that the "CET determined Markon's cost proposal as unrealistic due to non-conformance with solicitation guidelines and the Offeror's incorrect assumptions on the [CIA]'s system transition and modernization plans, requiring the CET to estimate an upward probable cost adjustment"). The SSA determined that Markon's [DELETED] were "inconsistent with the instructions provided in the in-person Industry Question and Answer (Q&A) sessions held with each interested Offeror following the Draft RFP release." *Id.* at 10. Given Arcfield's advantage under the past performance and cost factors, the SSA determined that the awardee's proposal represented the best value to the agency. *Id.* at 10-11. The SSA made contract award to Arcfield on July 11, 2025. *Id.* at 11. After

⁴ [DELETED].

⁵ [DELETED].

requesting and receiving a debriefing, which ended on July 23, Markon filed this protest with our Office.

DISCUSSION

Markon argues that the agency conducted unreasonable evaluations of cost realism and past performance. As discussed below, the CIA utilized unstated evaluation criteria in its evaluation of cost realism, and we sustain the challenge to the reasonableness of the cost realism evaluation on that basis. We deny the challenge of the past performance evaluation.⁶

Cost Realism

Markon challenges the agency's assessment of its proposed costs as unrealistic. As relevant here, in conducting the cost realism analysis, Markon calculates that the agency upwardly adjusted its proposed cost by approximately \$[DELETED] million, or [DELETED] percent. First Supp. Protest at 23. Without that adjustment, Markon claims that its costs would have been approximately \$[DELETED] million, or [DELETED] percent, less than Arcfield's. *Id.*; see AR, Tab 52, Protester's Debriefing at 23 (containing figures corroborating the protester's estimations). Markon challenges the upward adjustment of its cost, arguing that the agency's evaluation of cost realism was unreasonable and inconsistent with the solicitation. Comments and 2nd Supp. Protest at 18. The CIA contends that it reasonably evaluated cost realism in accordance with FAR section 15.404-1(d)(2). COS at 22-23.

A cost realism analysis is the process of independently reviewing and evaluating specific elements of each offeror's proposed costs to determine whether the proposed cost elements are realistic for the work to be performed, reflect a clear understanding of the requirements, and are consistent with the unique methods of performance and materials described in the offeror's technical proposal. FAR 15.404-1(d)(1). When an agency evaluates proposals for award of a cost-reimbursement contract or issuance of a 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. *Id.*; *IAP-C4ISR, LLC, B-421726.2 et al.*, Feb. 12, 2024, 2024 CPD ¶ 52 at 10. An offeror's proposed costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. FAR 16.505(b)(3); 15.305(a)(1); *IAP-C4ISR, LLC, supra*. A cost realism evaluation must evaluate each offeror's unique technical approach and assess whether the costs proposed are realistic for that approach. FAR 15.404-1(d)(1); *nou Sys., Inc.*, B-421225, Dec. 22, 2022, 2023 CPD ¶ 10 at 10; *Concurrent Techs. Corp.*, B-412795.2, B-412795.3, Jan. 17, 2017

⁶ Markon withdrew an allegation that the CIA conducted discussions--not clarifications--with the protester, and that the discussions were not meaningful. Comments and 2nd Supp. Protest at 17 n.5. Although we do not address all the protester's arguments in this decision, we have considered all of them.

CPD ¶ 25 at 15. GAO may sustain a protest where the record contains no meaningful consideration of the compatibility of an offeror's pricing with its proposed technical approach. *GiaCare & MedTrust JV, LLC*, B-407966.4, Nov. 2, 2016 CPD ¶ 321 at 9.

As an initial matter, in evaluating Markon's technical proposal, the TMET considered Markon's unique proposed approach and favorably evaluated it. The TMET assessed two minor strengths to the protester's proposal under the technical factor--one for each subfactor. AR, Tab 41, TMET Report at 19-20. Under the business operations approach subfactor, the minor strength was for Markon's approach to [DELETED]. *Id.* at 19. Under the business enterprise modernization approach subfactor, the TMET found that the proposal--which was aligned with the currently anticipated modernization of legacy systems--would "drive operational efficiency," [DELETED]. *Id.* at 20. The TMET evaluation did not downgrade Markon's proposal for failure to conform to any of the solicitation's requirements. See *id.*

As relevant here, Markon's proposal described "the implementation and sustainment of operational and modernization activities essential for business and IT transformation." AR, Tab 34, Markon Technical and Management Proposal at 27. Markon's proposal, at figure 3, described how the [DELETED] would transform previously manual effort into digitally automated processes. *Id.* As a result of these efficiencies, Markon [DELETED]. See *id.* at 31.

Despite the proposal's rationale and timeline for the proposed [DELETED], and the findings of the TMET, the CET--in conducting the cost realism analysis--credited the protester with no efficiencies in any of the contract performance periods. See AR, Tab 44, CET Report at 50 (adding back into the protester's probable cost [DELETED] that Markon [DELETED] through efficiencies). Although the CIA's cost realism assessment failed to credit the protester's proposal with [DELETED], the CET acknowledged that "Markon's proposed [DELETED] align with [the CIA]'s currently anticipated modernization of legacy systems to new [DELETED]."⁷ AR, Tab 44, CET Report at 35-36.

Ultimately, the agency determined Markon's [DELETED]--and thus the proposed costs--to be unrealistic because they did not comply with instructions "provided in the in-person Industry Question and Answers (Q&A) sessions, following the release of the Draft RFP." AR, Tab 44, CET Report at 35. As discussed above, the agency "internally documented" those in-person sessions that, the contracting officer states, included an instruction to offerors that they "should propose an approach to address how functions

⁷ Despite the CET's explicit finding that "Markon's proposed resource adjustments align with the [CIA]'s currently anticipated modernization," the CIA contends that the TMET found that Markon's "assumptions were incorrect and the recommended solutions misaligned with the Agency's requirements." COS at 29. The agency provides no citation to the record to substantiate that claim. See *id.*

will be performed/executed and not focus on the technology to be used to perform those functions.” COS at 4. That internally documented oral instruction was not incorporated into the final RFP. See AR, Tab 4, RFP; Tab 7, RFP § M.

The protester argues that the agency’s instructions have no significance in the award decision because the agency was required to evaluate proposals against the criteria in the final solicitation. Comments and 2nd Supp. Protest at 27, *citing* FAR 15.303(b); 41 U.S.C. 3703(c) (noting that “[t]he source selection authority shall . . . [e]nsure that proposals are evaluated based solely on the factors and subfactors contained in the solicitation.”); *Dell Fed. Sys., L.P.*, B-404996, B-404996.2, July 22, 2011, 2011 CPD ¶ 151 at 5 (noting that it is well-settled that comments on a draft solicitation do not control the meaning of the solicitation when it is subsequently issued); *McNeil Techs., Inc.*, B-278904.2, April 2, 1998, 98-1 CPD ¶ 96 at 4 (noting that “Answers Regarding Questions to Draft RFP” lacks probative value because the document, which was not part of the RFP, was never incorporated by amendment into the RFP). Markon argues that the CIA’s “reliance on comments made after the issuance of the draft RFP, prior to the issuance of the actual Solicitation, have no significance here and cannot direct the course of the evaluation and resultant award decision.” Comments and 2nd Supp. Protest at 27.

The CIA does not respond to Markon’s argument that the oral instructions were not incorporated into the solicitation and that it was therefore improper for the agency to include them as evaluation criteria. See Supp. Memorandum of Law (MOL) at 5-6. Rather, the agency contends that “the [CIA] did not and need not rely on those instructions as the basis for its evaluations.” MOL at 16. The agency makes this assertion notwithstanding the evaluators’ contemporaneous finding that Markon’s proposed costs were unrealistic because they did not comply with instructions “provided in the in-person Industry Question and Answers (Q&A) sessions, following the release of the Draft RFP.” AR, Tab 44, CET Report at 35. Again, as discussed above, the SSA adopted that specific finding. AR, Tab 49, SSD at 10 (noting that that Markon’s [DELETE] were “inconsistent with the instructions provided in the in-person Industry Question and Answer (Q&A) sessions held with each interested Offeror following the Draft RFP release”).

Based on our review, we find that the agency’s cost realism evaluation was unreasonable. As an initial matter, the record fails to support the agency’s assertion that it did not rely on lack of conformance with the oral instructions as the basis for concluding that Markon’s proposal failed to comply with the solicitation’s requirements. The record reflects that the CET found Markon’s proposed costs unrealistic because “Markon’s proposal did not comply with the provided instructions to not base their proposed approaches on assumptions concerning [the agency’s] efficiencies and modernization initiatives.”⁸ AR, Tab 44, CET Report at 35. In this regard, the CET

⁸ The CET also determined that a probable cost adjustment to Markon’s total proposed costs was “necessary in order to remove the appearance of an unfair advantage relating (continued...)

stated that “[s]pecifically, Markon [DELETE] . . . , were determined to be unrealistic and inconsistent with the instructions provided in the in-person Industry [Q&A] sessions, following release of the Draft RFP.” *Id.*

In addition, the SSA determined that Markon’s [DELETE] “was inconsistent with the instructions provided in the in-person Industry Question and Answer (Q&A) sessions held with each interested Offeror following the Draft RFP release.” AR, Tab 49, SSD at 10. It is well settled that oral communications--that would have the effect of altering the written terms of a solicitation--do not operate to amend a solicitation. *Richen Mgmt., LLC*, B-419253, Jan. 12, 2021, 2021 CPD ¶ 24 at 3 n.4. A contracting officer may provide oral notice of a solicitation amendment when time is of the essence. *Noble Supply and Logistics*, B-404731, Mar. 4, 2011, 2011 CPD ¶ 67 at 2. Here, there is no suggestion--in the contemporaneous record or otherwise--that time was of the essence. Moreover, the final RFP had not been issued; thus, oral direction of the contracting officer could not have amended the final solicitation against which proposals were evaluated. While the contracting officer could have incorporated the oral instructions into the final solicitation--thereby making them part of the evaluation criteria--the contracting officer did not do so here, and oral instructions alone do not act to amend a solicitation. Because the agency’s oral instructions were not incorporated into the solicitation, it was therefore improper for the agency to conduct its evaluation based on those instructions.

In addition, the record provides no support for the reasonableness of the upward adjustment of Markon’s probable costs on the basis that the solicitation otherwise precluded the kinds of enhancements the protester proposed. While the agency contends that the draft and final RFP “intentionally excluded discussion of the

(...continued)

to the incumbent’s knowledge of [CIA]’s modernization of legacy systems to new IT systems.” *Id.* at 33. In response to the protest, the agency maintains that, while this rationale was mentioned in the CET report, the SSA’s determination was based on the fact that “[b]y deviating from solicitation guidelines, Markon’s assumptions resulted in an unrealistic cost assessment of its proposed staffing reductions,” not on the basis of any unfair advantage. Supp. MOL at 5 (asserting that it is “the SSA’s determinations, and not the CET’s individual findings, that represent the [a]gency’s award decision”). In this regard, the agency states that “the cost realism analysis and associated [cost] adjustment were driven . . . by Markon’s failure to comply with the [s]olicitation requirements.” *Id.* at 1. The agency asserts that, while the CET team “referenced unfair advantage in its cost realism analysis, the record reflects that those limited references were not at the core of the [a]gency’s evaluation or decision here, nor did they ultimately impact the award decision.” *Id.* at 1-2. Accordingly, our decision focuses on the rationale set forth by the SSA, namely, that Markon’s [DELETE] were “inconsistent with the instructions provided in the in-person Industry Question and Answer (Q&A) sessions held with each interested Offeror following the Draft RFP release.” AR, Tab 49, SSD at 10.

Government's modernization plan," COS at 27, this assertion runs counter to the essence of the solicitation. In this regard, the SOW contained numerous requirements related to BSE modernization. As discussed above, these requirements, in part, provide for the contractor to: gain an operational understanding of how each functional team supports the BE by reviewing workflow documentation and SOPs; leverage existing and progressive enterprise-level business system solutions when determining enhancement strategies and explain both how leveraged solutions could contribute to modernizing the BE and how they might be implemented; evaluate and recommend detailed improvement strategies or other process improvements for the CIA's consideration; identify and recommend commercial off-the-shelf, government off-the-shelf, and public domain solutions that can enhance performance, improve product quality, and are cost effective and/or save development time. AR, Tab 5, SOW at 28. The SOW also set forth a comprehensive requirement for the contractor to "determine[e] enhancement strategies," "[e]valuate and recommend detailed improvement strategies," and identify "solutions that can enhance performance"; BE modernization was one of three goals of the contract. *Id.*; see *id.* at 6 (noting that the scope of the requirement was to "support the ADSS BE that includes Business Operations, IT Engineering, and BE Modernization activities"). The SOW, in brief, required the contractor to determine enhancement strategies, recommend improvement strategies, and identify solutions.

Moreover, the record reflects that the agency's cost evaluation treated the [DELETE] as a solicitation requirement. AR, Tab 31. RFP sect. L at 15. The CET rejected the TMET finding that Markon's proposal would "automate processes, streamline workflows and drive operational efficiency," AR, Tab 41 TMET Report at 20, when the CET as part of its upward cost-adjustment of Markon's proposal added back all [DELETE] that Markon identified as being saved through efficiencies. AR, Tab 44, CET Report at 50. The CET nowhere recognizes that the solicitation described the agency's [DELETE]. See *id.* As discussed, however, the RFP advised offerors that the [DELETE] provided in the solicitation was an estimate, not a requirement. The protester reduced its [DELETE] by creating efficiencies, which was integral to successful contract performance. See, e.g., AR, Tab 5, SOW at 28-29 (noting that the contractor was to "[e]nsure recommended solutions align with [CIA] requirements and goals and demonstrate how improvements will result in increased efficiencies and/or cost savings"). To realize those efficiencies, offerors were permitted to create "key ground rules and assumptions that have significant impacts on the proposed costs" and to provide them in their proposals. AR, Tab 31. RFP sect. L at 19. The record provides no support for the CIA's claim that Markon's technical proposal--which the agency evaluated as driving innovation--failed to conform to the solicitation's announced evaluation criteria when Markon's [DELETE] failed to correspond exactly to the solicitation's [DELETE].

We find that the agency's oral instructions were not incorporated into the solicitation and that it was therefore improper for the agency to conduct its evaluation based on those instructions. The record also fails to support the agency's assertion that the solicitation otherwise precluded the kinds of enhancements the protester proposed. Ultimately, rather than perform the required comparison of Markon's unique technical proposal with

its proposed costs, the agency upwardly adjusted Markon’s proposed costs based on a lack of conformance of Markon’s technical proposal with oral instructions not incorporated into the solicitation. Because the CIA’s evaluation of the realism of Markon’s proposed cost failed to conform to procurement regulations and the solicitation, we find that the agency’s evaluation and the resulting upward cost adjustment were unreasonable. We sustain the protest on this basis.

Evaluation of Offerors’ Past Performance

Markon also challenges the reasonableness of the CIA’s evaluation of the awardee’s and protester’s past performance. As discussed below, we find no basis on which to sustain these evaluation challenges.

Evaluation of Awardee’s Past Performance

Markon contends that the CIA unreasonably evaluated Arcfield’s proposal as high confidence under past performance because Arcfield lacks federal business enterprise references that would justify such a rating. Comments and 2nd Supp. Protest at 38. As noted above, the RFP defined scope and complexity as relevant if performed for a “[f]ederal business enterprise.” AR, Tab 7, RFP sect. M at 4. The CIA claims that the evaluation reasonably considered a “broad interpretation of the term [federal business enterprise], consistent with the industry’s common understanding of the phrase.” COS at 44.

Where a protester challenges a past performance evaluation, we will review the evaluation to determine whether it was reasonable and consistent with the solicitation’s evaluation criteria and procurement statutes and regulations, and to ensure that the agency’s rationale is adequately documented. *Starlight Corp.*, B-420267.3, B-420267.4, Mar. 14, 2022, 2022 CPD ¶ 65 at 4. The evaluation of an offeror’s past performance is generally a matter within the discretion of the contracting agency, and we will question an agency’s evaluation of past performance where it is unreasonable or undocumented. *Id.*

Markon argues that none of the contracts performed by Arcfield--which include dozens of contracts that were performed for the Army, Navy, or Air Force--were for a federal business enterprise, as defined by Markon. Protest at 44-45. In Markon’s view, the term “federal business enterprise” is restricted to federal business enterprise work for the intelligence community. As such, the protester claims that Arcfield “should have received neither a favorable nor an unfavorable rating on Past Performance.” Supp. Protest at 48. Markon asserts that the agency was required to define “federal business enterprise” in a reasonable way and failed to do so. Supp. Comments at 26. According to Markon, the CIA’s interpretation “is so broad that it potentially encompasses all of federal contracting.” Comments and 2nd Supp. Protest at 39. We disagree.

The contracting officer explains that the RFP “did not explicitly define the term ‘[f]ederal business enterprise,’” and that the term “is not a universally defined term within [f]ederal

regulations.” COS at 44. The contracting officer further explains that the agency’s evaluation “considered a broad interpretation of the term consistent with the industry’s common understanding of the phrase.” *Id.* In this regard, the contracting officer states that “[f]ederal business enterprise” is a generic phrase that may be used to describe a specific type of mission-driven or business-oriented organization or project.” *Id.* The contracting officer explains that the agency intended “[f]ederal business enterprise” to “encompass a complex and/or large-scale system or project involving multiple internal customers or stakeholders within the Federal Government, critical functions essential to a federal agency’s core mission, or a scope that operates within the confines and constraints of the Federal Government’s unique and highly regulated and/or complex agency/business environment.” COS at 44.

The contracting officer states that the solicitation provided context for the agency’s interpretation of the term by requiring offerors to “demonstrate recency and relevancy of previous efforts, either as a prime or subcontractor, by showing that the scope of their previous efforts supported a federal agency’s essential mission or functions in the areas of business operations, IT engineering, and business modernization support.” *Id.*, citing AR, Tab 7, RFP sect. M at 4-5. The contracting officer also states that “this would mean the scope could similarly involve support to an agency’s IT engineering and business operations functions within the federal government, and involve collaboration with multiple stakeholders and/or internal customers, as well as adherence to a complex regulatory environment.” *Id.*

Based on our review, we find nothing unreasonable regarding the agency’s evaluation or interpretation of the term federal business enterprise. As noted above, the record reflects that the term was not defined in the solicitation. COS at 44. As such, the agency chose to consider a broad interpretation of the term consistent with the industry’s common understanding of the phrase and consistent with the solicitation’s requirements. While the protester maintains that the agency’s interpretation is overly broad, Markon has failed to demonstrate that the agency’s interpretation is unreasonable or fails to comply with the terms of the RFP. A protester’s disagreement with the agency’s judgment regarding the evaluation of proposals or quotations, without more, does not establish that the agency acted unreasonably. *Imagine One Tech. & Mgmt., Ltd.*, B-412860.4, B-412860.5, Dec. 9, 2016, 2016 CPD ¶ 360 at 4-5. This protest ground is denied.

Evaluation of Protester's Past Performance

Markon challenges two facets of the CIA's evaluation of the protester's proposal under the past performance factor. First, the protester contends that the agency unreasonably assessed Markon's proposal a minor weakness under the technical performance subfactor of the past performance factor. Second, Markon contends that the CIA unreasonably assigned Markon's proposal a rating of satisfactory under the transition subfactor. Consequently, the protester asserts, the agency unreasonably evaluated Markon's past performance as moderate confidence instead of high confidence. We address these contentions below and find they are unsupported by the record.

Technical Performance Subfactor Minor Weakness

Markon's proposal provided three past performance references, all performed for the agency: [DELETE].⁹ *Id.* at 6. In evaluating the [DELETE] reference, the agency assessed the protester's proposal the following minor weakness under the technical performance subfactor:

[DELETE].

AR, Tab 42, Past Performance Evaluation Team (PPET) Report at 6.

Markon contends the assessment of the minor weakness was unreasonable. Protest at 35. The protester notes that the performance issue was the subject of clarifications and contends that Markon was not the contractor responsible for the deficient performance. *Id.* at 36. The protester asserts that the evaluation focused disproportionately on IT functions that were not Markon's responsibility until December 2024. *Id.* at 37. Markon further asserts that the evaluation omitted Markon's past performance for acquisition support functions and failed to evaluate the transition between the [DELETE] contracts. *Id.* at 38. Finally, Markon contends that the agency apparently did not solicit information regarding the protester's performance on the [DELETE] contract. First Supp. Protest at 40.

The CIA provided a comprehensive response to the allegation. See COS at 36-40. The CIA argues that "the Agency's actions demonstrated it was not ignoring or overlooking any information and that reasonable efforts were made to obtain additional information." *Id.* at 37. The agency notes that the PPET reconvened to review and consider Markon's response to the negative past performance. *Id.* The agency argues that it gave reasonable consideration to IT functions because, as the incumbent contractor since June 2014, Markon has been responsible for providing "business operations and IT engineering activities." *Id.*

⁹ The protester notes that the [DELETE] requirements have been combined to form this solicitation's requirement. AR, Tab 35, Protester Past Performance Proposal at 5.

Regarding the alleged failure of the agency to evaluate Markon's performance of acquisition support functions and the transition between [DELETE], the agency asserts that Markon incorrectly assumes that because an aspect of its performance was not explained or discussed in the ratings, it therefore means the evaluators ignored the information. *Id.* at 38. In fact, the agency maintains that, where the PPET assessed an offeror's performance as meeting expectations, the agency determined that aspect of performance simply did not warrant assessment of strengths or weaknesses. *Id.*

The CIA argues that the debriefing it provided the protester noted that the agency solicited past performance information--PPQs--from the references provided in Markon's proposal. COS at 39, *citing* AR, Tab 53, Debriefing at 2. The agency contends that the PPET made several reasonable attempts to validate and obtain all past performance reference information and that the agency "reasonably sought, but was unsuccessful in," obtaining additional information from the past performance references for [DELETE]. COS at 39. The CIA argues that Markon was not "negatively impacted" by the PPET's failure to secure a PPQ for the [DELETE] contract because "the Agency determined it could adequately assess the past performance record with the information provided in the Past Performance Volume."¹⁰ COS at 39.

Markon's comments on the agency report do not respond to the agency's substantive defense of the reasonableness of the agency's assessment of this minor weakness. See Comments and 2nd Supp. Protest at 43-54. Markon instead includes a long block quotation from the contracting officer's statement and asserts that "[n]one of that reasoning appears anywhere in the contemporaneous evaluation documents and, thus, is suspect as a *post-hoc* rationale developed in the heat of litigation." *Id.* at 54, *quoting* COS at 38 (explaining why the agency reasonably evaluated Markon's performance under the [DELETE] contract--in particular, the IT functions).

It is well-settled that post-protest explanations that provide a detailed rationale for contemporaneous conclusions--filling in previously unrecorded details--will generally be considered if those explanations are credible and consistent with the contemporaneous record. *RTI Int'l*, B-420577, June 13, 2022, 2022 CPD ¶ 144 at 8. Markon does not assert, let alone demonstrate, that the contracting officer's statement is not credible or consistent with the contemporaneous record. See Comments and 2nd Supp. Protest at 54. In our view, the contracting officer's explanation is both credible and consistent with the PPET report. The record supports the reasonableness of the agency's uncontradicted explanation, which is consistent with the contemporaneous record, and we therefore deny this allegation.

¹⁰ We note the agency favorably evaluated Markon's performance under the [DELETE] contract. See AR, Tab 42, PPET Consensus Report at 13-14 (assigning Markon's proposal a minor strength under the technical performance subfactor for performance of the [DELETE] contract); at 15 (assigning Markon's proposal a minor strength under the management subfactor for performance of the [DELETE] contract).

Transition Subfactor Rating of Satisfactory

Markon asserts that the CIA's evaluation of the protester's past performance as satisfactory under the transition subfactor was unreasonable. Protest at 39. The protester contends that, although "Markon provided detailed descriptions of how it had successfully managed transitions for all three of its [past performance] references," the CIA "failed to recognize the extra value of those transition examples and, thus, unreasonably failed to assign Strength ratings to those aspects of Markon's proposal." *Id.* Markon asserts, in particular, that its performance of the [DELETE] contract demonstrated "that Markon transitioned most of the necessary resources from the predecessor contract and added new resources, fully staffing the project within thirty days, a rapid pace in Federal Government contract transitioning." *Id.* at 40. The protester argues that the agency "unreasonably failed to recognize the value in such an efficient transition approach." *Id.*

The CIA asserts that "the PPET found no evidence in the submitted references of transition past performance that merited a higher confidence rating." COS at 42. The agency contends that the PPET documented its basis for rating Markon's past performance under the transition subfactor as satisfactory confidence because the past performance references met but did not exceed the agency's expectation. *Id.* The agency asserts the contemporaneous evaluation reflects that assessment. *Id.*, *citing* AR Tab 42, PPET Report at 16-17 (noting the PPET found all Markon past performance references met but did not exceed the solicitation requirements).

Markon's discussion of the agency's evaluation of the protester's past performance contains numerous references to Markon's incumbency. See, e.g., Comments and 2nd Supp. Protest at 43 (noting that Markon is "the proven incumbent"); at 45 (noting that Markon "was the incumbent contractor on the [DELETE] contract, a predecessor to the [DELETE], and is the incumbent on the [DELETE] contract now"); at 47 (noting that, "because it is performing the incumbent contract work, Markon currently employs the full complement of incumbent personnel"). Markon does not, however, articulate why the agency's evaluation of the protester's proposal as satisfactory under the transition subfactor was unreasonable. See *id.* at 51-52 (noting that, under the transition subfactor the agency "determined that Markon demonstrated no Strengths, Weaknesses, or Deficiencies for any of the references"), *citing* AR, Tab 42, PPET Report at 16-17. The record provides no basis on which to find unreasonable the evaluation of the protester's proposal as satisfactory under the transition subfactor, and we deny this allegation.

CONCLUSION

For the reasons discussed above, we conclude that the CIA's cost evaluation failed to conform to procurement law and regulation when the CIA's cost evaluation employed criteria not contained in the final solicitation. As such, we conclude that the agency's

cost evaluation and the resulting upward adjustment to Markon's cost proposal were 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, a reevaluation of the realism of Markon's proposed cost proposal in accordance with the terms of the solicitation could result in Markon's most probable cost being lower than Arcfield's. It is also possible that a new tradeoff decision could result in award to Markon as the offeror whose lower-cost proposal represents the best value to the agency. Accordingly, we sustain Markon's challenge to the agency's evaluation of the realism of the protester's proposed costs.

RECOMMENDATION

We recommend that the agency reevaluate cost realism consistent with the terms of the solicitation and relevant procurement laws and regulations and make a new award decision. We also recommend that Markon be reimbursed the reasonable costs of filing and pursuing its protest, including attorneys' fees. 4 C.F.R. § 21.8(d)(1). Markon should submit its certified claims for costs directly to the agency within 60 days after receipt of this decision. *Id.* § 21.8(f)(1).

The protest is sustained.

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