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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Science Applications International Corporation

File: B-408690.2; B-408690.3

Date: December 17, 2014

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Michael A. Hordell, Esq., Thomas J. Madigan, Esq., and Kristopher Berr, Esq., Pepper Hamilton LLP, for Noble Supply & Logistics; and William E. Hughes, Esq., Whyte Hirschboeck Dudek S.C., for SupplyCore, Inc., the intervenors.
Jon L. Lightner, Esq., and Bethany Hsu, Esq., Defense Logistics Agency, for the agency.
Glenn G. Wolcott, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably assigned protester a past performance rating of satisfactory confidence where record shows that protester failed to meet its socio-economic and/or subcontracting goals under four of the five contracts it submitted for evaluation.

2. Where solicitation for fixed-price contract did not provide for a price realism assessment, the agency's price evaluation was reasonable and consistent with the terms of the solicitation where it established minimum price objectives for the solicitation's various line items and, for prices below the minimum objective, requested confirmation from the offeror regarding the accuracy of its pricing and verification that the item priced was in accordance with the solicitation's item description.

3. Protests that the agency failed to conduct meaningful discussions because it did not advise the protester that its prices were too high is denied where agency established minimum and maximum price objectives for the items being acquired and asked protester to "improve your price" for items priced above agency's maximum objectives.

DECISION

Science Applications International Corporation (SAIC), of McLean, Virginia, protests the Defense Logistics Agency's (DLA) award of contracts to SupplyCore, Inc. (SupplyCore), of Rockford, Illinois, and Noble Supply & Logistics (Noble), of Rockland, Massachusetts, pursuant to request for proposals (RFP) No. SPE8EG-13-R-0002 to provide supplies and services pursuant to DLA's tailored logistics support (TLS) prime vendor program in the Southeast Region of the United States.[1] SAIC asserts that various aspects of the agency's evaluations were flawed, including the evaluations of past performance and price, and maintains that the agency failed to conduct meaningful discussions with SAIC.

We deny the protests.

BACKGROUND

In September 2013, DLA published the solicitation at issue, seeking proposals to provide "the full line of maintenance, repair and operations (MRO) supplies and incidental services . . . to . . . military installations [and] other Federal Agencies and Departments . . . in the Southeast Region." RFP at 30. The solicitation contemplated the award of a single indefinite-delivery/indefinite-quantity (ID/IQ) contract in each zone,[2] for a 5-year ordering period,[3] stating that "each participating facility . . . will be able to purchase its normal day-to-day MRO requirements from the [awardees]," and providing that "[e]ach delivery order issued against the contract will be firm fixed price." Id. at 6-7.

The solicitation provided that each contract would be awarded on a best value basis, considering three evaluation factors: past performance,[4] technical merit,[5]

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[1] The solicitation divided the Southeast Region into two zones: Zone 1, which included the states of North Carolina, South Carolina, Georgia, and Tennessee; and Zone 2, which included the states of Mississippi, Alabama, and Florida. RFP at 7. The solicitation contemplated separate awards for each zone and, as discussed below, the agency awarded contracts to SupplyCore for Zone 1 and to Noble for Zone 2. Although SAIC filed separate protests challenging the award decision in each zone, we have combined the protests for purposes of this decision.

[2] The solicitation provided that offerors were permitted to submit proposals for one or both zones, but provided that "the offeror who is selected [for award in] Zone 2 will be eliminated from competition on Zone 1." RFP at 8.

[3] The solicitation did not provide for option periods. RFP at 6.

[4] Offerors were directed to submit information regarding up to six prior contracts for evaluation. RFP at 62. The solicitation provided that "[b]oth relevancy and

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and price.[6] Id. at 73. With regard to price, the solicitation contained a price evaluation list (PEL) containing "a representative sample" of items to be purchased,[7] along with estimated quantities for each item. RFP at 69. Offerors were required to submit fixed acquisition ceiling prices[8] for a minimum of 90 percent of the PEL items for each of three pricing periods. Id. Offerors were also required to submit fixed distribution prices[9] applicable to 20 different pricing tiers.[10]

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contractor performance will be evaluated," stating that the agency would assign overall past performance ratings of substantial confidence, satisfactory confidence, limited confidence, no confidence and unknown (neutral) confidence. RFP at 73.

[5] With regard to technical merit, the solicitation established three subfactors listed in descending order of importance: product sourcing; distribution/delivery; socio-economic objectives. RFP at 73.

[6] The solicitation provided that past performance was more important than technical merit, and that the non-price factors were significantly more important than price. Id.

[7] The solicitation provided that the items to be provided "are commercial products or modified commercial products which are primarily identified by the manufacturer's part number and a commercial item description," and include: heating, ventilation and air conditioning supplies; plumbing supplies; electrical products; tools of various kinds; chemical, lubricating, and rubber products; construction supplies; perimeter security items; communications devices; and various other commercial supplies required by warfighters to accomplish their mission, along with incidental services. Id. at 30-31.

[8] The solicitation defined an acquisition ceiling price as "the maximum acquisition unit price that the Government will pay during each applicable price period for a PEL item." RFP at 66. The solicitation also defined an "acquisition unit price" as "the actual invoice price of the product . . . paid . . . to the manufacturer or supplier" without transportation, indirect costs, or profit. Id.

[9] The solicitation defined a distribution price as "a firm fixed price offered as a dollar amount which represents all elements of the contract price other than the acquisition price." Id. at 67.

[10] The solicitation's pricing tier matrix sought distribution prices based on the total value of an order. For example, tier 1 sought distribution pricing for an order of "less than $10.00"; tier 2 sought distribution pricing for orders from "$10.00 to $24.99"; tier 3 sought distribution pricing for orders from "$25.00 to $49.99"; and tier 20 sought distribution pricing for orders of "$1,000,000.00 and above." Id. at 67-68.

With regard to evaluation of price, the solicitation stated that the offerors' acquisition and distribution prices "will be evaluated utilizing accepted price analysis methods," elaborating that "[c]omparison of offers to each other, comparison with market research and comparison with prior requirements are some examples of such analysis." RFP at 77. The RFP also provided that offerors "may be required" to substantiate their PEL prices by providing an invoice, quotation or other documentation. Id. Finally, the solicitation advised offerors that the agency "may conduct a Reverse Auction" to conduct price negotiations for distribution prices. Id. at 8-9, 61, 78.

On December 6, 2013, proposals were submitted by eight offerors, including SAIC, SupplyCore and Noble.[11] SAIC submitted separate proposals for Zone 1 and Zone 2. In evaluating SAIC's proposals under the most important evaluation factor, past performance, the agency assigned weaknesses based on SAIC's failure to meet socio-economic and/or subcontracting goals under four of the five contracts SAIC submitted for evaluation. Agency Report (AR), Tab 4 (Zone 1), Pre-Negotiation Memo, at 194-95; AR, Tab 4 (Zone 2), Pre-Negotiation Memo, at 217-18.

In May 2014, the agency conducted discussions with the offerors. Among other things, the agency advised SAIC that its failures to meet socio-economic and/or subcontracting goals on the four prior contracts were viewed as weaknesses. AR, Tab 5 (Zone 1), Discussion Letter to SAIC, at 1-2; AR, Tab (Zone 2), Discussion Letter to SAIC, at 1-2. Additionally, with regard to price, the agency asked SAIC to "improve [its] price," specifically identifying several hundred PEL items that the agency viewed as being too high-priced.[12] AR, Tab 5 (Zone 1), Discussion Letter to SAIC, at 3-5; AR, Tab 5 (Zone 2), Discussion Letter to SAIC, at 3-5. In June, the agency conducted a second round of discussions with the offerors. AR, Tab 6 (Zone 1); AR, Tab 6 (Zone 2).

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[11] The proposals of the other unsuccessful offerors, and the agency's evaluation thereof, are not relevant to SAIC's protests and are not further discussed.

[12] For Zone 1, the solicitation contained 495 PEL items and three pricing periods, for a total of 1485 line items. AR, Tab 4 (Zone 1), Pre-Negotiation Memo, at 156. In its discussion letter for Zone 1, the agency listed [redacted] line items for which SAIC was requested to "improve your price." AR, Tab 5 (Zone 1), Discussion Letter to SAIC, at 3-5. For Zone 2, the solicitation contained 499 PEL items and three pricing periods, for a total of 1497 line items. AR, Tab 4 (Zone 2), Pre-Negotiation Memo, at 176. In its discussion letter for Zone 2, the agency listed [redacted] line items for which SAIC was requested to "improve [its] price." AR, Tab 5 (Zone 2), Discussion Letter to SAIC, at 3-5.

On or before June 20, final proposal revisions were submitted. Thereafter, the protester's and awardees' proposals were evaluated as follows:

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Zone 1

	SAIC	SupplyCore
Past Performance	Satisfactory Confidence	Satisfactory Confidence
Technical Merit	Outstanding	Outstanding
Total Evaluated Price	$22,072,484	$18,238,107

AR, Tab 9, Memo for the Record, at 1;[13] Source Selection Decision Document (SSDD) for Zone 1, at 175.

Zone 2

	SAIC	Noble
Past Performance	Satisfactory Confidence	Satisfactory Confidence
Technical Merit	Outstanding	Outstanding
Total Evaluated Price	$34,879,924	$22,520,719

SSDD for Zone 2, at 223.

On August 26, the agency selected Supply Core for award in Zone 1 and Noble for award in Zone 2. SAIC's protests followed.

DISCUSSION

SAIC's protests challenge the agency's evaluations with regard to past performance and price, and assert that the agency failed to conduct meaningful discussions with SAIC. As discussed below, we find no merit in any of SAIC's allegations.[14]

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[13] The agency states that, in preparing SAIC's debriefing for Zone 1, it discovered that a portion of the source selection decision document reflected an error in listing the total evaluated prices; the effect of the error was to slightly <u>decrease</u> SupplyCore's price advantage. Contracting Officer's Statement at 8. Since correction of the error <u>increased</u> SupplyCore's price advantage, the agency concluded there was no prejudice. <u>Id.</u>

[14] SAIC's various protest submissions present additional arguments, some of which are variations of those specifically discussed in this decision. Among other things, SAIC asserts that its proposal should have been rated outstanding, rather than good, under one of the technical merit subfactors; that the awardees' proposals should have been rated lower under the technical merit factor based on SAIC's speculation that the awardees will be unable to successfully perform at their lower

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Past Performance

First, SAIC asserts that it was unreasonable for the agency to assign SAIC the same "satisfactory confidence" rating that it assigned to SupplyCore and Noble. Protest (Zone 1) at 4; Protest (Zone 2) at 4. Referencing its status as an incumbent contractor, SAIC complains that the agency "appears to have disregarded" what SAIC characterizes as its "across-the-board" ratings of "exceptional" for many of its prior contracts. Protest (Zone 1) at 17; Protest (Zone 2) at 17. More specifically, SAIC complains that it was unreasonable for the agency to downgrade SAIC's past performance for what SAIC characterizes as "four minor weaknesses" pertaining to SAIC's failure to meet its socio-economic and subcontracting goals. Protest (Zone 1) at 15-19; Protest (Zone 2) at 16-19. SAIC asserts that such failures should have been "offset" by other positive aspects of SAIC's past performance and SAIC's "ongoing efforts to substantially increase small business participation." Id.

A contracting agency's evaluation of past performance is, by its nature, subjective, and is primarily a matter within the discretion of the contracting agency; accordingly, our Office will not substitute our judgment for that of the agency. See, e.g., MFM Lamey Group, LLC, B-402377, Mar. 25, 2010, 2010 CPD ¶ 81 at 10. Rather, we will examine an agency's evaluation to ensure that it was reasonable and consistent with the stated criteria and applicable statutes and regulations. See, e.g., Swift & Staley, Inc., B-408792, Dec. 6, 2013, 2013 CPD ¶ 284 at 6; LOGMET LLC, B-407061, Oct. 17, 2012, 2012 CPD ¶ 307 at 6. A protester's mere disagreement with the agency's judgment does not establish that an evaluation was improper. AT&T Corp., B-299542.3, B-299542.4, Nov. 16, 2007, 2008 CPD ¶ 65 at 19.

Here, as the agency points out, the solicitation expressly put offerors on notice that the agency's evaluation of past performance would include consideration of "the degree to which the offeror met . . . socio-economic goals." RFP at 74. The solicitation further advised offerors that the agency would rate "how well the offeror met its subcontracting goals." Id.

Consistent with the agency's assessments, the evaluation record shows that SAIC failed to meet its socio-economic and/or subcontracting goals in four of the five contracts it submitted for past performance evaluation. Specifically, with regard to contract No. SPM500-04-D-BP24, the agency found that "[p]er the performance data submitted, SAIC did not meet their overall [redacted], [redacted], and [redacted] goals." SSDD (Zone 1) at 104; SSDD (Zone 2) at 145. With regard to contract No. SPM500-4-D-BP06, the agency found that, "[p]er their proposal and

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proposed prices; and that the agency's best value tradeoff was unreasonable. We have considered all of SAIC's allegations and find no basis to sustain its protests.

the CPARS dated May 15, 2012 - May 31, 2013, SAIC did not meet their [redacted] goal." SSDD (Zone 1) at 107; SSDD (Zone 2) at 147. With regard to contract No. SPM4AR-07-D-0001, the agency found that, "SAIC stated in their proposal they did not meet the following [redacted] goals: [redacted], [redacted], [redacted], [redacted], and [redacted]." SSDD (Zone 1) at 109; SSDD (Zone 2) at 150. With regard to contract No. SPM7LX-11-D-0157, the agency determined that, "SAIC stated in their proposal they did not meet the following [redacted] goals: [redacted] and [redacted] goals. For the period of September 22, 2012 – September 21, 2013, SAIC did not meet their [redacted] goal of [redacted] with [redacted] of [redacted]." SSDD (Zone 1) at 111; SSDD (Zone 2) at 152.

The agency's evaluation record also reflects the agency's recognition that SAIC met or exceeded most of its prior contract requirements, but nonetheless, consistent with the terms of the solicitation, the agency concluded that SAIC's multiple failures to meet its socio-economic and/or subcontracting goals were past performance weaknesses. Accordingly, it rated SAIC's performance as "good," but not outstanding, for four of the five contracts, and assigned an overall past performance rating of satisfactory confidence.[15]

Based on our review of the evaluation record, we find no basis to question the agency's determination that SAIC's failure to meet its socio-economic and/or subcontracting goals in four of five prior contracts constituted weaknesses, nor do we question the agency's overall rating of satisfactory confidence. As discussed above, the agency's assessments were consistent with the solicitation's stated evaluation criteria, supported by the evaluation record, and reasonable. Further, we find no merit in SAIC's assertion that other aspects of its past performance and/or SAIC's "effective corrective action" negated its prior failures and rendered the agency's evaluation unreasonable. Supp. Protest (Zone 1) at 3-4, Supp. Protest (Zone 2) at 3-4. While an agency may properly consider a contractor's corrective action, it is not required to ignore instances of negative past performance. See, e.g., DM Petroleum Operations Co., B-409004, B-409004.5, Jan. 15, 2014, 2014 CPD ¶ 52 at 11; Wisconsin Physicians Service Insurance Corp., B-401068.14, B-401068.15, Jan. 16, 2013, 2013 CPD ¶ 34 at 9-12; The Bionetics Corp., B-405145, B-405145.2, Sept. 2, 2011, 2011 CPD ¶ 173 at 7-8. Here, SAIC's complaints regarding the agency's past performance evaluations merely reflect its ongoing dissatisfaction with the agency's judgments and, accordingly, provide no bases for sustaining its protests.

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[15] The agency's source selection plan (SSP) for this procurement defined a satisfactory confidence rating as, "[b]ased on the offeror's recent/relevant performance record, the Government has a reasonable expectation that the offeror will successfully perform the required effort." AR, Tab 3 (Zone1), SSP, at 12; AR, Tab 3 (Zone 2), SSP, at 12. For a substantial confidence rating, the plan explained that the expectation of successful performance must be high. Id.

Price Evaluation

Next, SAIC asserts that the agency's price evaluations were flawed arguing, in effect, that the awardees' prices were unrealistically low. While acknowledging that the agency "did not expressly state that it was performing a price realism analysis," SAIC notes that the solicitation "indicated that the Agency may seek substantiation of offerors' prices by seeking invoices or other documentation." Supp. Protest/Comments (Zone 1) at 19; Supp. Protest/Comments (Zone 2) at 19. In this context, SAIC complains that the agency "inexplicably neglected to seek substantiation of [the awardees'] pricing," characterizing the agency's inaction as "an unreasonable failure to follow its own price evaluation methodology." Protest (Zone 1) at 4; Protest (Zone 2) at 4. Finally, SAIC asserts that, because of their low prices, the awardees "cannot possibly achieve and maintain" the solicitation's fill-rate requirements, and speculates that neither of the awardees would have been able to substantiate their lower proposed prices. Protest (Zone 1) at 21-22; Protest (Zone 2) at 21-22. Accordingly, SAIC asserts that the awardees should have been found "ineligible for award." Protest (Zone 1) at 24; Protest (Zone 2) at 25.

As a general rule, when awarding a fixed-price contract, an agency is only required to determine whether the offered prices are fair and reasonable. Federal Acquisition Regulation (FAR) § 15.402(a). An agency's concern in making a price reasonableness determination focuses on whether the offered prices are too high, rather than too low. Vital Link, Inc., B-405123, Aug. 26, 2011, 2011 CPD ¶ 233 at 6. Where there is no evaluation factor providing for consideration of price realism, a determination that an offeror's price is too low generally concerns the offeror's responsibility. PAE Gov't Servs., Inc., B-407818, Mar. 5, 2013, 2013 CPD ¶ 91 at 6. While an agency may conduct a price realism analysis in awarding a fixed-price contract for the limited purposes of assessing whether an offeror's low price reflects a lack of technical understanding or risk, see FAR § 15.404-1(d)(3), offerors must be advised that the agency will conduct such an analysis. Emergint Techs., Inc., B-407006, Oct. 18, 2012, 2012 CPD ¶ 295 at 5-6. We have held that, in the absence of an express price realism provision, we will conclude that a solicitation contemplates a price realism evaluation only where it expressly states that the agency will review prices to determine whether they reflect a lack of technical understanding, and where the solicitation states that an offeror's submission may be rejected on the basis of low prices. DynCorp Int'l LLC, B-407762.3, June 7, 2013, 2013 CPD ¶ 160 at 9. Absent a solicitation provision providing for a price realism evaluation, agencies are neither required, nor permitted, to conduct one in awarding a fixed-price contract. Emergint Techs., Inc., supra.

Here, as SAIC acknowledges, the solicitation did not advise offerors that the agency would perform a price realism analysis. More specifically, the solicitation did not state that the agency would review proposed prices to determine whether they reflected an offeror's understanding of the requirements, nor did it advise offerors that their proposals could be rejected if their prices were considered to be too low. Rather, as noted above, the solicitation merely stated that the agency "may" require offerors to substantiate their PEL prices with quotations, invoices, or other documentation. RFP at 77. On this record, SAIC's assertions that the agency was required to seek supporting documentation for proposed prices, and should have downgraded or rejected the awardees' proposals because they offered prices substantially lower than those offered by SAIC, fail to state bases for protest.

Additionally, the record here establishes that, in performing its price evaluation, the agency established maximum and minimum price objectives for each PEL item. AR, Tab 7 (Zone 1) Price Negotiation Memo, at 12-14; AR, Tab 7 (Zone 2), Price Negotiation Memo, at 11-13. The price objectives were established by comparing the offerors' proposed prices to each other, along with consideration of GSA (General Services Administration) pricing, commercially available pricing (based on the agency's internet research), and historical pricing. Id. Where an offeror proposed PEL pricing that was lower than the minimum objective, the offeror was asked to confirm the accuracy of its pricing, and to verify that the items priced were in accordance with the item description. Id. On this record, we find no basis to question either the reasonableness of the agency's price evaluation or its consistency with the terms of the solicitation. SAIC's protests challenging the agency's price evaluations are denied.

Meaningful Discussions

Finally, SAIC protests that the agency "failed to provide SAIC with meaningful discussions, which prevented SAIC from lowering its prices sufficiently to be in line for award." Protest (Zone 1) at 2; Protest (Zone 2) at 2. In this regard, SAIC describes its own prices as "too high . . . to receive an award," and asserts that the agency had an obligation to advise SAIC of this fact.[16] Protest (Zone 1) at 25; Protest (Zone 2) at 28-29.

When an agency engages in discussions with an offeror, the discussions must be "meaningful," that is, sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision. Hanford Envtl. Health Found., B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 8. Although discussions

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[16] We note the following inconsistency in SAIC's protest allegations. On the one hand, in challenging the agency's price evaluations, SAIC complains that the agency failed to substantiate the awardees' proposed prices, asserting that the awardees will be unable to perform at their unrealistically low prices. Protest (Zone 1) at 21-22, 24; Protest (Zone 2) at 21-22, 25. Yet, here, SAIC asserts that, if the agency had advised SAIC that its prices were too high, SAIC "would have dropped its prices lower than [the awardees'] in order to win an award." Protest (Zone 1) at 25-26; Protest (Zone 2) at 29-30.

must address deficiencies and significant weaknesses identified in proposals, the precise content of discussions is largely a matter of the contracting officer's judgment. FAR § 15.306(d)(3); American States Utilities Servs., Inc., B-291307.3, June 30, 2004, 2004 CPD ¶ 150 at 5. In this regard, there is no requirement that an agency inform an offeror during discussions that its price may be too high, where the offeror's price is not considered excessive or unreasonable. Uniband, Inc., B-289305, Feb. 8, 2002, 2002 CPD ¶ 51 at 11.

Here, as discussed above, the agency established minimum and maximum objectives for each of the PEL line items. AR, Tab 7 (Zone 1), Price Negotiation Memo, at 12-14; AR, Tab 7 (Zone 2), Price Negotiation Memo, at 11-13. As also discussed above, the agency conducted two rounds of discussions, during which the agency specifically asked SAIC to "improve your price" for the various line items that were above the agency's maximum price objectives. AR, Tab 5 (Zone 1), Discussion Letter to SAIC, at 3-5; AR, Tab 5 (Zone 2), Discussion Letter to SAIC, at 3-5. Following submission and evaluation of final revised proposals, the agency concluded that SAIC's total evaluated prices were fair and reasonable, albeit higher than those of the awardees.[17] SSDD (Zone 1) at 175; SSDD (Zone 2) at 221. Id. On this record, we find no merit in SAIC's assertion that the agency failed to conduct meaningful discussions regarding SAIC's proposed prices.[18]

The protests are denied.

Susan A. Poling
General Counsel

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[17] In this regard, the agency's evaluation record shows that SAIC's total evaluated price was the fourth lowest (of six competitive range offerors) in Zone 1, and the fifth lowest (of eight competitive range offerors) in Zone 2. SSDD (Zone 1) at 175; SSDD (Zone 2) at 221.

[18] To the extent SAIC asserts that the agency failed to conduct meaningful discussions regarding its distribution prices, the record is to the contrary. The RFP advised offerors that the agency would use a reverse auction to conduct price negotiations regarding the distribution matrix. RFP at 8-9, 61. In conducting the reverse auction (during which SAIC [redacted]), SAIC was able to see the low prices being offered by its competitors, and SAIC's final distribution pricing was determined to be fair and reasonable. SSDD (Zone 1) at 167-71; SSDD (Zone 2) at 212-18. On this record, there is no merit in SAIC's assertion that the agency failed to conduct meaningful discussions regarding its distribution prices.