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## Decision

**Matter of:** Imagine One Technology & Management, Ltd.

**File:** B-412860.4; B-412860.5

**Date:** December 9, 2016

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Stacey H. Campbell, Esq., Department of the Navy, for the agency.  
Jonathan L. Kang, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest challenging the evaluation of the offerors' technical proposals is denied where the evaluations were reasonable and did not reflect unequal treatment.
  2. Protest challenging the evaluation of the realism of the offerors' proposed costs is denied where the agency reasonably evaluated the awardee's proposed indirect rates, and where the balance of the allegations, if meritorious, would not make the protester's evaluated cost lower than the awardee's.
  3. Protest that the awardee received an advantage arising from the improper disclosure of information by its outside counsel, in violation of the protective order issued by our Office, is denied where, despite the improper disclosure, there is not a prejudicial violation of any procurement law or regulation.
  4. Protest that the agency improperly allowed the awardee to revise its proposal beyond the scope of instructions during discussions is denied where offerors were not restricted in making revisions in the manner argued by the protester.
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### DECISION

Imagine One Technology & Management, Ltd., of Colonial Beach, Virginia, protests the issuance of a task order to Precise Systems, Inc., of Lexington Park, Maryland, by the Department of the Navy, Naval Air Systems Command, under request for proposals (RFP) No. N00024-15-R-3217, for project management support services.

The protester argues that the issuance of the order to Precise was unreasonable for the following reasons: the agency unreasonably evaluated the offerors' technical proposals; the agency unreasonably evaluated the realism of offerors' proposed costs; counsel for Precise improperly disclosed information to its client which was covered by a protective order issued by our Office, thereby giving the awardee an improper advantage; and the agency conducted improper discussions with the awardee.

We deny the protest.

## BACKGROUND

The RFP was issued on July 7, 2015, and sought proposals to provide program management support services for the Naval Air Systems Command's PMA231 program office, which provides acquisition management support for the E-2 and C-2 aircraft weapons systems. The required services include management support for international business and foreign military sales, financial management, acquisition documentation, and engineering and logistics management services. RFP, Statement of Work (SOW), at 19.<sup>1</sup> The competition was set aside for small businesses that held Navy Seaport-e multiple-award indefinite-delivery/indefinite-quantity (ID/IQ) contracts. RFP at 2. The solicitation anticipated the issuance of a task order on a cost-plus-fixed-fee basis, with contract line items for other direct costs, with a base period of 1 year and four 1-year options.

Proposals were to be evaluated based on cost and two non-cost factors, technical and past performance. Id. at 108. The technical factor had two subfactors, which were listed in descending order of importance: (1) understanding and approach, and (2) staffing and personnel. Id. at 109. The solicitation stated that the agency would evaluate the realism and reasonableness of offerors' proposed costs. Id. For purposes of award, the technical factor was "more important" than past performance, and the non-cost factors were "significantly more important" than cost. Id. at 108-9.

The Navy received proposals from three offerors, including Imagine One (the incumbent contractor) and Precise, by the closing date of August 10. The agency selected Precise's proposal for issuance of the task order on February 23, 2016. Imagine One received a debriefing and filed a protest with our Office (B-412860) on March 15. The protester argued that the agency unreasonably evaluated the

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<sup>1</sup> Citations to the RFP are to the conformed copy provided by the Navy in its report responding to the protest. Citations to pages in the record, including the conformed RFP, are to the Bates-numbered pages provided by the agency in its report.

offerors' proposals under the technical, past performance, and cost evaluation factors.

The Navy provided its report on the protest on April 14. On April 25, Imagine One filed its comments on the agency report, along with a supplemental protest (B-412860.2). As discussed in further detail below, the supplemental protest argued that Precise's proposed key personnel did not meet the solicitation's minimum experience requirements, and that Precise was unduly reliant on its proposed large business subcontractors in a manner that should have caused the Navy to question the awardee's small business status. Supp. Protest (B-412860.2) at 2. On May 4, prior to the time for filing its report on the supplemental protest, the Navy advised our Office that it would take corrective action in response to Imagine One's protest.<sup>2</sup>

During the corrective action, the Navy conducted discussions with the three offerors and requested final proposal revisions (FPRs). The evaluation ratings and evaluated costs for Imagine One's and Precise's FPRs were as follows:<sup>3</sup>

	IMAGINE ONE	PRECISE
<b>TECHNICAL</b>	<b>GOOD</b>	<b>OUTSTANDING</b>
Understanding and Approach	Good	Outstanding
Staffing and Personnel	Acceptable	Good
<b>PAST PERFORMANCE</b>	<b>SUBSTANTIAL CONFIDENCE</b>	<b>SUBSTANTIAL CONFIDENCE</b>
<b>PROPOSED COST</b>	<b>\$57,619,862</b>	<b>\$53,995,222</b>
<b>EVALUATED COST</b>	<b>\$57,866,649</b>	<b>\$54,026,632</b>
<b>EVALUATED COST WITH OPTION TO EXTEND<sup>4</sup></b>	<b>\$63,577,778</b>	<b>\$59,618,602</b>

<sup>2</sup> Imagine One filed a request (B-412860.3) for a recommendation by our Office that it be reimbursed its costs of filing and pursuing its initial protest (B-412860, B-412860.2). We will address this request in a separate decision.

<sup>3</sup> For the technical evaluation factor, the Navy assigned offerors' proposals one of the following ratings: outstanding, good, acceptable, marginal, or unacceptable. RFP at 112. For the past performance factor, the agency assigned one of the following ratings: substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence (neutral). *Id.* at 112-13.

<sup>4</sup> The evaluated cost for the option to extend was evaluated in accordance with the provisions of Federal Acquisition Regulation (FAR) clause 52.217-8 (Option to Extend Services). RFP at 110.

Agency Report (AR), Tab 22, Source Selection Decision Memorandum (SSDM), at 2.

The source selection authority (SSA) reviewed the evaluations prepared by the agency's technical, past performance, and cost teams, and concurred with the findings. Id. at 2-3. The SSA noted that Precise's proposal received 16 strengths, with no weaknesses, significant weaknesses, or deficiencies, and that Imagine One's proposal received 8 strengths, with 1 weakness, and no significant weaknesses or deficiencies. Id. at 3, 6. The SSA concluded that Precise's proposal was superior to Imagine One's proposal under the technical evaluation factor, and had a lower evaluated cost. Id. at 11. For these reasons, the SSA selected Precise for issuance of the task order. The Navy provided a debriefing to Imagine One on September 9 and this protest followed.<sup>5</sup>

## DISCUSSION

Imagine One contends that the Navy's issuance of the order to Precise was improper for five primary reasons:<sup>6</sup> (1) the agency evaluated the offerors' proposals unreasonably and unequally under the understanding and approach subfactor of the technical evaluation factor; (2) the agency evaluated the offerors' proposals unreasonably and unequally under the staffing and personnel subfactor of the technical evaluation factor; (3) the agency unreasonably evaluated the realism of the offerors' proposed costs; (4) counsel for Precise violated the protective order issued by our Office in connection with Imagine One's first protest (B-412860, B-412860.2), which gave the awardee an improper advantage in the competition that took place during corrective action; and (5) the agency conducted improper discussions with Precise by allowing it to revise its proposal outside the scope of the instructions provided to offerors. For the reasons discussed below, we find no basis to sustain Imagine One's protest.

The task order competition here was conducted among Navy Seaport-e contract holders pursuant to the provisions of FAR part 16. In reviewing protests of awards in task order competitions, we do not reevaluate proposals but examine the record

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<sup>5</sup> The task order was issued under the Navy Seaport-e multiple award, ID/IQ contract, and the awarded value of the order exceeds \$10 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of orders under multiple-award ID/IQ contracts. 10 U.S.C. § 2304c(e)(1)(B).

<sup>6</sup> Although this decision does not address every argument raised by Imagine One, we have reviewed all of the protester's challenges and find that none provides a basis to sustain the protest.

to determine whether the evaluations and source selection decision are reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations. DynCorp Int'l LLC, B-411465, B-411465.2, Aug. 4, 2015, 2015 CPD ¶ 228 at 7; Diamond Info. Sys., LLC, B-410372.2, B-410372.3, Mar. 27, 2015, 2015 CPD ¶ 122 at 7. A protester's disagreement with the agency's judgment regarding the evaluation of offerors' proposals, without more, is not sufficient to establish that the agency acted unreasonably. STG, Inc., B-405101.3 et al., Jan. 12, 2012, 2012 CPD ¶ 48 at 7.

#### Understanding and Approach Subfactor

Imagine One argues that the Navy's evaluation of the offerors' proposals under the understanding and approach subfactor of the technical evaluation factor was unreasonable and was also unequal with regard to the assignment of strengths to Precise's proposal. For the reasons discussed below, we find no basis to sustain the protest.

The RFP required offerors to submit responses for two sample tasks, "Program Object[ive] Memorandum (POM) Submittal Documentation," and "Program Sustainment Phase Execution." RFP at 95. The solicitation advised that offerors' proposals would be evaluated as follows:

The Government will evaluate the offeror's understanding and approach based on the responses required by Section L of this solicitation. The Government will evaluate for clarity, completeness, and realism of the responses and the extent to which the proposed approach will ensure successful accomplishment of the tasks described in the SOW.

Id. at 109.

The Navy's evaluation of Precise's proposal under the understanding and approach subfactor identified 14 strengths and no weaknesses, significant weakness or deficiencies. AR, Tab 17, Technical and Past Performance Consensus Evaluation Report (Consensus Evaluation), at 4-10. The agency's evaluation of Imagine One's proposal identified seven strengths, with one weakness, no significant weaknesses, no deficiencies. Id. at 23-28. Based on these evaluations, the agency assigned Precise's proposal a rating of outstanding, and Imagine One's proposal a rating of good. Id. at 11, 16, 28, 30.

### Strength for should cost analysis

Imagine One argues that although the Navy assigned its proposal a strength based on its proposed approach to “should cost” analysis<sup>7</sup>, the agency did not give this strength the appropriate weight or emphasis in the evaluation. In this regard, sample task No. 2 required offerors to address the following requirement: “The teams are required to manage all cost, schedule, and performance efforts related to their programs while addressing Should Cost initiatives.” RFP at 95.

The Navy assigned a strength to Imagine One’s proposal because its response to the sample task “demonstrates a thorough knowledge of, and a good approach to, implementing and sustaining Should Cost.” AR, Tab 17, Consensus Evaluation, at 25. The agency concluded that the protester’s proposed approach “will be advantageous to the Government during contract performance because [the protester] not only understands the DoD Better Buying Power but, proposes how to apply Should Cost allowing PMA231 to actively discover cost saving opportunities and recapitalize the savings keeping the platform relevant for the warfighter.” Id.

Imagine One argues that its proposal offered and was instrumental in developing “the premier ‘should cost’ tool within the Navy community,” and that this tool received an award from the Navy in 2015. Protest (B-412860.4) at 11. The protester contends that the agency unreasonably failed to accord greater weight to this strength, and that the strength, along with the others assigned, should have merited an outstanding rating for the understanding and approach subfactor. Although the protester disagrees with the level of emphasis given by the agency to this strength, the protester’s disagreement with the agency’s judgment, without more, does not provide a basis to sustain the protest. See STG, Inc., supra.

### Weakness for lack of detail regarding impacts to production line

Next, Imagine One argues that the Navy unreasonably assigned its proposal a weakness regarding its lack of detail in discussing the impact of program modifications on the E-2D aircraft production line. Sample task No. 2 required offerors to provide a “detailed step-by-step procedure and methodology” that addressed modification of requirements for the E-2D program, such as weapon system upgrades and aerial refueling modifications. RFP at 95.

The agency assigned the following weakness:

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<sup>7</sup> Should cost reviews evaluate the economy and efficiency of an existing work force, methods, materials, equipment, real property, operating systems, and management to promote short and long-range improvements in the contractor’s economy and efficiency in order to reduce the cost of performance of Government contracts. FAR § 15.407-4(a)(1).

Imagine One & Management, Ltd.[’s] proposal only addresses planning for [DELETED] but lack[s] any details behind it: “[DELETED].” . . . While Imagine One Technology & Management, Ltd. [DELETED], they did not address the fundamental question of how modifications impact the production line. Planning without the details does not address production line impacts or the synergies that may be gained during a modification. This indicates an inadequate understanding of the work involved during the sustainment phase with respect to the production line. This weakness is a flaw in the proposal that increases the risk of unsuccessful contract performance.

AR, Tab 17, Consensus Evaluation, at 28.

Imagine One argues that the assessment of this weakness was unreasonable because its proposal contained numerous references to impacts on the production line. The protester, however, simply points to a 9-page section of its proposal and argues that the agency failed to reasonably evaluate all of this information in its proposal. Protest (B-412860.4) at 12; Protester’s Comments (Oct. 23, 2016) at 23. Based on our review of the record, we agree with the protester that its proposal references impacts to the production line. Our role in reviewing protest allegations, however, does not involve an independent assessment of the protester’s proposal or substitution of our judgement for the agency’s. See DynCorp Int’l LLC, supra. In the absence of a more in-depth explanation as to why this section of the protester’s proposal demonstrates that it provides details about the impacts of modifications on the production line and that the agency’s evaluation was unreasonable, we find no basis to sustain the protest.

#### Unequal treatment

Next, Imagine One argues that the Navy treated the offerors unequally because 8 of the 14 strengths assigned to the awardee’s proposal concerned areas where the protester’s proposal addressed the same issues or provided the same benefits. We have reviewed each allegation and find that none provide a basis to sustain the protest. We address two representative examples below.

For the first example, the Navy assigned a strength (1 of 14) to Precise’s proposal with regard to the offeror’s response to sample task No. 1 as it related to the PMA231 POM process. The strength assigned to the awardee’s proposal concerned its overall approach to the sample task requirements regarding POM submittal documentation, as follows:

Precise Systems demonstrates an exceptional understanding of the Program Objective Memorandum (POM) process, the organizational

structure of the approval chain, the key participants, and the role each plays within the process.

Precise demonstrates the following:

- A keen understanding of how requirements are developed, evolve and are prioritized
- [DELETED]
- The 2 different Resource Sponsors and associated POM processes (N2/N6 and N98)
- An understanding of the E-2D security constraints.

This is an aspect of Precise Systems['] proposal that has merit because it will be advantageous to the Government during cont[r]act performance because application of this knowledge will decrease risks during the transition phase and the contractor will require less oversight from E-2/C-2 Integrated Program Team (IPT) Leads during program execution.

AR, Tab 17, Consensus Evaluation, at 4; see also Tab 22, SSDD, at 4, 9.

Imagine One argues that part of the strength assigned to Precise's proposal was associated with decreased transition risk, and that the Navy therefore unreasonably failed to assign a strength to the protester's proposal because the protester was the incumbent contractor and therefore required no transition. The Navy explains, however, that the reference to Precise's ability to "decrease risks during the transition phase," AR, Tab 17, Consensus Evaluation, at 4, did not refer to the transition from the incumbent contractor to a non-incumbent awardee, but rather the "risk the program undertakes as it transitions through the acquisition life cycle, (i.e., a capability moving from the Science and Technology phase to the Development phase or from the Production phase to the Sustainment phase)," AR, Tab 31, Decl. of Technical Evaluation Team (TET) Chair, at 1. This explanation appears consistent with the SOW, which requires the contractor to provide support through all phases of the acquisition process. See RFP, SOW, at 18. On this record, we find no basis to conclude that the agency evaluated the offerors on an unequal basis with regard to the issue of transition, in the manner the protester alleges.<sup>8</sup>

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<sup>8</sup> Imagine One also argues that, in any case, its proposal should have been credited with offering a low risk with regard to contract transition because its incumbent status would avoid the need for a transition. The protester does not demonstrate,  
(continued...)



Imagine One also argues that, even if the strength assigned to Precise's proposal was not related to transition between contractors, the agency in any event should have given credit to the protester for having low risk because it offered the same capabilities and strengths assigned to Precise's proposal concerning the PMA231 POM process. As the agency notes, however, the protester's proposal was also credited with a similar strength concerning the same requirement as Precise, based on the protester's "in-depth knowledge of the relationship of POM issue sheets," which "will be advantageous to the Government during contract performance because they identify ways to increase the chance of a successful POM submission by alignment with other stakeholders." AR, Tab 17, Consensus Evaluation, at 23. The agency further found that "[t]his detail indicates a good understanding of the depth and complexity of this task which reduces performance risk." *Id.* On this record, we find no basis to conclude that the agency treated the offerors unequally concerning this area of the evaluation.

For the second example, the Navy assigned a strength (2 of 14) to Precise's proposal with regard to the offeror's response to sample task No. 1 as it related to the requirement to address "possible areas to be investigated in researching each task." RFP at 95. The strength assigned to the awardee's proposal was as follows:

In its response to Sample Task # 1, Precise Systems proposes investigating top level strategic documents, Defense Planning Guidance, DoD, and [Department of the Navy (DoN)] POM Memorandums, that will assist the IPTs with developing POM issues that align with the DoD and DoN vision. This is an aspect of the proposal that has merit because it reaches beyond the PMA231 POM Process. This will be advantageous to the Government during contract performance as the offeror will gain perspective on the current budget environment, constraints and trade-offs that must be considered when understanding how the E-2/C-2 fits into the overall resource plan at the service (Navy) level and within the Department of Defense (DoD) as a whole. What was proposed will keep PMA231 POM submittals aligned with the strategic vision of the Chief of Naval Operations (CNO) and increase the likelihood of success.

AR, Tab 17, Consensus Evaluation, at 4-5.

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(...continued)

however, that its proposal offered a strength that the agency unreasonably failed to consider in this regard.

The SSA cited this aspect of Precise's proposal as one of the strengths that "gave its proposal an advantage" over Imagine One's. AR, Tab 22, SSDD, at 9. Specifically, the SSA stated as follows:

Precise's Understanding and Approach subfactor was extremely detailed and at the national strategic level. In particular, its approach covered addressing POM issues not only at the local NAVAIR level but aligned with the strategic visions of the Navy and DoD. This was evidenced by Precise's strength to investigate top level strategic documents, Defense Planning Guidance, DoD, and DoN POM Memorandums that will assist the IPTs with developing POM issues that align with the DoD and DoN vision. This is an aspect of Precise's proposal that has merit because it reaches beyond the PMA231 POM Process.

Id.

Imagine One argues that it was unreasonable for the Navy to assign a strength to Precise's proposal regarding "reaching beyond the PMA231 POM process" because the protester's proposal offered a similar approach. Imagine One argues that the following section of its proposal reflected a similar approach to Precise's:

Team Imagine One currently researches POM issues and potential POM issue candidate sheets across multiple IPTs. . . . Our team is current with and will continue to review and research all instructions and guidance relevant to this tasking including: NAVAIR 5000 manual, NAVAIR Acquisition Guide, [Department of Defense (DoD)] and [Chief of Naval Operations (OPNAV)] Instructions, specifically OPNAVINST 3050.25 Warfighting Capability, Capacity and Wholeness Assessments.

AR, Tab 15, Imagine One FPR, at 8.

The Navy states that it understood the awardee's proposal to include research that addresses issues beyond the immediate PMA231 POM process, specifically "high level strategic guidance," which will "assist the IPTs in their review of annual Defense Planning Guidance (DPG), and DoD and Department of the Navy (DoN) POM Memorandums that provide top level Defense Department and Navy priorities." Memorandum of Law (MOL) at 11 (citing AR, Tab 7, Precise Initial Proposal, at 57). In contrast to Precise's proposal, the agency states that it found that the protester's proposal did not address the same types of high-level policy and strategic guidance, and instead focused on current research of existing process manuals and policies, such as the NAVAIR manuals and guides cited in the protester's proposal. See id. (citing AR, Tab 15, Imagine One FPR, at 8). In effect, the agency found that the protester's broad statement that it would consider "all

relevant documents,” and its citation to lower-level process documents was not equivalent to the basis for the strength assigned for the awardee’s proposal. On this record, we find no basis to conclude that the agency treated the offerors unequally concerning this area of the evaluation.

#### Staffing and Personnel Subfactor

Next, Imagine One argues that the Navy’s evaluation of the offerors’ proposals under the staffing and personnel subfactor of the technical evaluation factor was unreasonable based on the acceptability of the awardee’s proposed key personnel. The protester also argues that the agency unreasonably assigned the same strength to both offerors’ proposals concerning the proposed use of currently-employed personnel. For the reasons discussed below, we find no basis to sustain the protest.

Offerors were required to propose key personnel and a staffing plan for meeting the requirements of the SOW. The RFP advised that offerors’ proposals would be evaluated as follows:

For this factor, the Government will evaluate the quality of key personnel. In addition, key personnel will be evaluated on the extent to which they meet or exceed the corresponding labor category qualifications outlined in Section C, paragraph 19.0. Offerors are reminded that, while the Government is only evaluating key personnel against corresponding labor category qualifications for purposes of source selection, the offeror’s personnel (both key and non-key) shall meet the corresponding labor category qualifications during task order performance. . . .

Note: The offeror is forewarned that it may receive a weakness if it proposes the predominance of a labor category or SOW section tasking using prospective or contingent hire employees and the evaluation team deems this a risk to successful performance.

RFP at 109.

#### Evaluation of Precise’s proposed key personnel

Imagine One argues that the Navy unreasonably found that Precise’s proposed key personnel met the solicitation’s minimum experience requirements. The RFP required offerors to propose 14 key personnel for the position of senior program analyst and to provide resumes that demonstrated minimum education and experience requirements. RFP at 42. As relevant here, the minimum experience requirements included the following: “Familiarity with [Secretary of the Navy (SECNAV)], OPNAV, and [Office of the Secretary of Defense (OSD)] forms related

to [planning, programming, and budgeting system (PPBS)] and Contract Data Requirements List is required. Demonstrated experience in the program/project status, earned value management and schedules.” Id.

Imagine One argues that several of the resumes for the awardee’s proposed key personnel did not specifically state that the individuals were familiar with the SECNAV, OPNAV, and OSD forms identified in the RFP, and also did not demonstrate experience with earned value management. The Navy found that all of the resumes for all of the senior program analysts proposed by Imagine One and Precise met the solicitation requirements. AR, Tab 17, Consensus Evaluation, at 14, 30; Tab 35, Staffing Evaluation Worksheet, at 4, 7. In this regard, the Navy explains that the evaluators looked at both the representations in the resumes as well as the proposed individuals’ work experience to assess whether the minimum experience requirements were met. MOL at 21; see AR, Tab 31, Decl. of TET Chair, at 2-4. The record here shows that the Navy evaluated both offerors’ proposed personnel on a similar basis; the agency neither relied solely on the representations made, nor required a proposed individual’s resume to merely recite the requirement.

Moreover, the resumes provided by Imagine One in its FPR for three proposed senior program analysts did not specifically state that the individuals have experience with the required forms, and the resumes for two proposed senior program analysts did not state that the individuals had experience with earned value management. See AR, Tab 15, Imagine One FPR, at 30-31, 34-35, 48-49. Thus, even if the protester were correct that the agency waived the solicitation requirement for key personnel by finding proposed individuals acceptable where they did not specifically state they had the required experience, the agency waived this requirement for the protester’s own personnel.

Competitive prejudice is an essential element of a viable protest, and we will sustain a protest only where the protester demonstrates that, but for the agency’s improper actions, it would have had a substantial chance of receiving the award. DRS ICAS, LLC, B-401852.4, B-401852.5, Sept. 8, 2010, 2010 CPD ¶ 261 at 21. Even where an agency effectively waives a material solicitation requirement, there is no basis for our Office to find prejudice to the protester where the agency waived the requirement for both the protester and awardee. Air Ctr. Helicopters, Inc., B-412789 et al., June 2, 2016, 2016 CPD ¶ 157 at 6-7. We therefore find no basis to sustain the protest.

#### Evaluation of the offerors’ proposed use of their current workforce

Next, Imagine One argues that the Navy’s evaluation of the offerors’ proposals was unreasonable because the agency initially assigned both offerors a strength for their proposed use of their existing work forces, but subsequently revised the awardee’s

strength in a manner that made it unreasonable for the offerors' proposal to be considered equal.

In connection with the initial award and evaluation, the Navy assigned Precise's proposal a strength based on its plan to provide a workforce comprised of [DELETED] percent current employees, as this approach would reduce the "risk of workforce gaps during initial startup ensuring the continued execution of program office tasking through transition." AR, Tab 17, Consensus Evaluation, at 11-12. During corrective action, the awardee's response to the agency's discussion questions revised its staffing, and the agency accordingly revised the strength for the awardee's proposal to note that it proposed a workforce comprised of [DELETED] percent current staff; the agency, however, cited the same benefit regarding reduced risk. Id. at 15. With regard to Imagine One's proposal, the agency assigned a strength because it proposed a workforce comprised of [DELETED] percent current employees. Id. at 29. The agency assigned a strength based on the same language used to describe the strength for Precise concerning reduced risk. Id. The SSA concluded that the offerors had a "similar strength" with regard to their proposals for use of their current workforces. AR, Tab 22, SSDM, at 9.

Imagine One argues that it was unreasonable for the agency to assign both offerors' proposals the same strength where the protester proposed [DELETED] percent current employees, and the awardee proposed only [DELETED] percent. The Navy notes that its evaluation during corrective action specifically recognized the change to proposed staff in Precise's FPR, and that the strength was revised to reflect this change. AR, Tab 17, Consensus Evaluation, at 15. The agency states that the strength for each offeror was related to the absence of risk rather than the relative percentage of each offeror's proposed current staff. Supp. MOL at 9. In this regard, the agency notes that the RFP advised offerors as follows: "The offeror is forewarned that it may receive a weakness if it proposes the predominance of a labor category or Statement of Work (SOW) section tasking using prospective or contingent hire employees and the evaluation team deems this a risk to successful performance." RFP at 96. The agency states that even though the awardee proposed [DELETED] contingent hires, out of a total of 14 proposed key personnel, this did not represent a risk to successful contract performance and therefore merited a strength. Supp. MOL at 9.

Moreover, we find no basis to conclude that assigning more weight to the strength for Imagine One's proposal based on the percentage of current employees offered would result in a change to the relative ranking of the offerors' proposals. In this regard, even if more weight were assigned to the strength for the protester's proposal under the staffing and personnel subfactor, the awardee had one more

strength for this subfactor than the protester<sup>9</sup>; further, the awardee's proposal was rated higher under the more heavily-weighted understanding and approach subfactor. We therefore conclude that there is no possibility of prejudice to the protester arising from the assignment of a "similar" strength for each offeror's proposal, notwithstanding the differing levels of current employees proposed, as there is no reasonable prospect for the protester to be considered higher-rated than the awardee under the non-cost evaluation factors.

### Cost Realism Evaluation

Next, Imagine One argues that the Navy unreasonably evaluated the realism of the offerors' proposed costs. The protester cites a number of areas where it contends that the agency failed to make upward adjustments of Precise's proposed cost, and also argues that the agency unreasonably adjusted the protester's proposed cost upward with regard to a key personnel labor category. For the reasons discussed below, we conclude that the protester's argument regarding the agency's evaluation of Precise's proposed indirect cost rates has no merit. We further conclude that, even if the remainder of the protester's arguments regarding the evaluation of cost had merit, Precise's evaluated cost would remain lower than Imagine One's. We therefore find no basis to sustain the protest.

As discussed above, the task order was to be awarded primarily on a cost-plus-fixed-fee basis, and provided for the evaluation of the realism of offerors' proposed costs. RFP at 2. When an agency evaluates a proposal for the award of a cost-reimbursement contract or order, 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 §§ 15.305(a)(1), 15.404-1(d); Exelis Sys. Corp., B-407673 et al., Jan. 22, 2013, 2013 CPD ¶ 54 at 7 (discussing FAR part 15 cost realism standards in a FAR part 16 task order procurement). Consequently, an agency must perform a cost realism analysis to determine the extent to which an offeror's proposed costs are realistic for the work to be performed. FAR § 15.404-1(d)(1); DynCorp Int'l LLC, supra, at 8. In assessing cost realism, an agency is not required to conduct an in-depth cost analysis, see FAR § 15.404-1(d)(1), or to verify each item; rather, the evaluation requires the exercise of informed judgment by the contracting agency, AdvanceMed Corp.; TrustSolutions, LLC, B-404910.4 et al., Jan. 17, 2012, 2012 CPD ¶ 25 at 13. Our review of an agency's cost realism evaluation is limited to determining whether the

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<sup>9</sup> The Navy found that Precise's proposal provided the following strength: "Precise Systems [DELETED], which exceeded the RFP requirement of an organizational chart to include position, titles, and the number of full time equivalents (FTEs) proposed for each support position." AR, Tab 17, Consensus Evaluation, at 11.

cost analysis is reasonably based and not arbitrary. Jacobs COGEMA, LLC, B-290125.2, B-290125.3, Dec. 18, 2002, 2003 CPD ¶ 16 at 26.

Imagine One argues that the Navy unreasonably evaluated Precise’s proposal in the following areas, which should have resulted in an upward adjustment of the awardee’s evaluated cost: (1) unreasonable evaluation of the lack of escalation for Precise’s [DELETED] (\$[DELETED]); (2) improper application of Precise’s [DELETED] overhead rate (\$[DELETED]<sup>10</sup>); (3) unreasonable evaluation of the realism of Precise’s indirect rates (\$[DELETED]); and (4) failure to account for a proposed markup of Precise’s subcontractor costs (\$[DELETED]). Protester’s Comments (Oct. 21, 2016) at 43-47. Imagine One also argues that the agency unreasonably relied upon data from Salary.com<sup>11</sup> to evaluate the protester’s proposed labor rate for the project analyst position, and argues that correction of this would have reduced Precise’s cost advantage over Imagine One by \$[DELETED]. Id. at 50-51.

With regard to the realism of Precise’s proposed indirect rates, Imagine One argues that the Navy unreasonably found the awardee’s proposed overhead and general and administrative (G&A) rates realistic despite being below the awardee’s historical rates. The Navy’s cost realism evaluation considered the following information regarding Precise’s proposed indirect rates:

	<b>Overhead-Contractor Site</b>	<b>Overhead-Government Site</b>	<b>G&amp;A</b>
Proposed Rate	[DELETED]	[DELETED]	[DELETED]
2012 Actual Rate	[DELETED]	[DELETED]	[DELETED]
2013 Actual Rate	[DELETED]	[DELETED]	[DELETED]
2014 Actual Rate	[DELETED]	[DELETED]	[DELETED]
2015 Provisional Rate	[DELETED]	[DELETED]	[DELETED]
2016 Forward Pricing Rate	[DELETED]	[DELETED]	[DELETED]
2017 Forward Pricing Rate	[DELETED]	[DELETED]	[DELETED]
2018 Forward Pricing Rate	[DELETED]	[DELETED]	[DELETED]
2019 Forward Pricing Rate	[DELETED]	[DELETED]	[DELETED]

<sup>10</sup> The protester argues that “the impact appears to be well into [DELETED] figures and possibly as much as \$[DELETED].” Protester’s Comments (Oct. 21, 2016) at 43. For the purpose of discussing prejudice, below, we use the higher end of the protester’s estimate.

<sup>11</sup> Salary.com is a commercial service that tracks salary data for various labor positions throughout U.S. labor markets. See www.salary.com (last visited Nov. 25, 2016).

2020 Forward Pricing Rate	[DELETED]	[DELETED]	[DELETED]
2021 Forward Pricing Rate	[DELETED]	[DELETED]	[DELETED]

AR, Tab 19, Cost Evaluation Report (Precise), at 18-19.

Imagine One notes that Precise proposed overhead and G&A rates that were lower than the awardee's historical rates. The protester contends that the difference between the historical and proposed rates show that the proposed rates were not realistic, on their face, and that the agency failed to address this discrepancy. Protester's Comments (Oct. 21, 2016), at 45-46. The protester argues that if the agency had applied the awardee's 2014 historical rates, this adjustment would increase the awardee's evaluated cost by \$[DELETED]. Id. at 46 n.12.

The record shows that the Navy's cost evaluators reviewed Precise's proposed overhead and G&A rates by examining Precise's historical rates for 2012-2014, its provisional rate for 2015, and its forward pricing rates for 2016-2021. AR, Tab 19, Cost Evaluation Report (Precise), at 18-19. The agency explained that the proposed rates and forward pricing rates were based on the following analysis:

The proposed rates and forward pricing rates were calculated by utilizing the provisional billing rates and factoring in four additional awards that were received in 2015 after the provisional billing rates were approved. Precise provided extensive forward pricing indirect rate calculation spreadsheets to justify the proposed indirect rates. The Contract Specialist does not take exception to the rationale and substantiating data provided to justify the proposed indirect rates.

Id. at 19. The agency acknowledged that "[t]he overhead (contractor and client) rates and the G&A rate were slightly lower than the historical actual indirect rates and provisional rates provided," but concluded that they were "were consistent with the forward pricing rates." Id. The agency therefore found the rates were realistic. Id.

We conclude that the Navy's evaluation here was reasonable. Imagine One provides no basis to support its argument that the awardee's historical rates are necessarily more realistic than the proposed rates, simply because the historical rates are higher. In this regard, the protester does not specifically challenge the calculation of the forward pricing rates, and instead argues only that the proposed rates were lower than the forward pricing rates. Moreover, the protester does not demonstrate that the agency's conclusion that the proposed rates are "consistent" with the forward pricing agreement rates was unreasonable simply because the forward pricing rates were slightly lower than the proposed rates. In sum, the protester's disagreement with the agency's judgment provides no basis to sustain the protest. See AdvanceMed Corp.; TrustSolutions, LLC, supra, at 16-17.



The evaluated cost with the option to extend was \$63,577,778 for Imagine One, and \$59,618,602 for Precise--a difference of \$3,959,176. The sum of all the cost evaluation errors alleged by Imagine One would result in an upward adjustment of Precise's evaluated cost by \$[DELETED], and a downward adjustment of Imagine One's evaluated cost by \$[DELETED]--making the protester's evaluated cost lower by approximately \$[DELETED]. However, as discussed above, we find no merit to the protester's argument regarding the evaluation of Precise's indirect costs; therefore, even if the protester's remaining cost realism arguments had merit, the sum of those adjustments would, at best, reduce the difference between the offerors' evaluated costs by \$[DELETED]--leaving Precise's evaluated cost \$[DELETED] lower than Imagine One's evaluated cost.<sup>12</sup>

Because we conclude that none of the protester's other arguments provide a basis to sustain the protest, we conclude that there is no possibility of prejudice regarding the remaining cost evaluation issues because the protester's proposal would remain lower rated under non-cost factors with a higher evaluated cost. We therefore do not address the other cost evaluation issues further. See Odyssey Marketing Grp., Inc., B-412695; B-412695.2, Apr. 21, 2016, 2016 CPD ¶ 109 at 5-6 (protester fails to demonstrate possibility of prejudice where allegations concerning evaluation of price, even if meritorious, would not give it a substantial chance for award).

#### Violation of the Protective Order

Next, Imagine One argues that outside counsel for Precise violated the protective order issued by our Office in connection with the initial protest (B-412860, B-412860.2) by disclosing to the awardee one of the protester's arguments concerning the awardee's small business status. For the reasons discussed below, we agree with the protester that the disclosure by counsel for Precise was improper under the terms of the protective order. We also conclude, however, that the disclosure does not provide a basis to sustain the protest.

Our Office issued a protective order for the initial protest on March 17, 2016. As relevant here, the order limits "disclosure of certain material and information submitted in the . . . protest, so that no party obtaining access to protected material under this order will gain a competitive advantage as a result of the disclosure." Protective Order, (Mar. 17, 2016), at 1. The order "applies to all material that is

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<sup>12</sup> All of Imagine One's cost realism allegations would result in an adjustment in the protester's favor of \$[DELETED]. The alleged error regarding the evaluation of Precise's indirect costs would increase the awardee's evaluated cost by \$[DELETED]. Eliminating the indirect cost impact would result in a maximum potential adjustment in Imagine One's favor of \$[DELETED], which is smaller than the \$3,959,176 advantage for the awardee's evaluated cost.

identified by any party as protected, unless [GAO] specifically provides otherwise,” and strictly limits access to protected material only to those persons admitted under the order. Id. at 1-3. In short, the protective order prohibits outside counsel admitted to the protective order from providing information covered by the protective order to their clients, until such information is approved for released from the order.

The record, as developed in this protest, shows the following sequence of events. We admitted outside counsel for the protester and the intervenor to the protective order on March 24. On April 25, Imagine One filed a supplemental protest based on information received in the Navy’s report responding to the protest. The protester argued that the awardee’s proposal stated that only [DELETED] of the 15 proposed key personnel positions would be filled by Precise personnel, and that the remaining positions would be filled by the awardee’s proposed subcontractors, who were large businesses. Supp. Protest (B-412860.2) at 2. The protester argued that this staffing approach reflected a violation of the ostensible subcontractor rule that was obvious from the face of the proposal, which would render the awardee other than a small business for purposes of this procurement, and therefore ineligible for award. The protester argued that the contracting officer was therefore required to refer the matter to the Small Business Administration (SBA) for a formal size determination.<sup>13</sup>

On April 27, of the attorneys admitted as outside counsel for the intervenor disclosed to Precise the fact that Imagine One filed a supplemental protest alleging that the awardee’s proposal, on its face, violated the ostensible subcontractor rule. Intervenor’s Response to GAO Questions (Nov. 10, 2016) at 1-2. At that time, counsel for the intervenor did not have approval from agency counsel and protester’s counsel for such a disclosure. Id. Counsel for the intervenor states that only the general allegation regarding the ostensible subcontractor rule was disclosed, and that “[n]o other information regarding the allegation was revealed to Precise.” Id. at 1.

Between April 27 and May 3, counsel for the three parties exchanged drafts and reached consensus on a proposed version of Imagine One’s comments and supplemental protest argument that could be released to Precise; this version of the document would have disclosed the ostensible subcontractor argument. Email from Intervenor’s Counsel to GAO (Nov. 18, 2016, 1:05 pm). The parties, however, did

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<sup>13</sup> Per regulations issued by the SBA, an ostensible subcontractor is a subcontractor that performs primary and vital requirements of a contract (or of an order under a multiple award schedule contract), rather than the prime contractor, or a subcontractor upon which the prime contractor is unusually reliant. 13 C.F.R. § 121.103(h)(4). A contractor and its ostensible subcontractor are treated as joint venturers, and therefore affiliates, for size determination purposes. Id.; see Sevatec, Inc., B-410665, B-410665.3, January 21, 2015, 2015 CPD ¶ 332 at n. 4.

not reach final agreement for the release of the proposed redacted document to Precise. Id.

On May 4, the Navy advised our Office on that it would take corrective action in response to the initial protest (B-412860, B-412860.2). Counsel for the protester subsequently advised counsel for the intervenor that they withdrew approval for the disclosure of the proposed redacted version to Precise, and requested that intervenor's counsel "not move to finalize the current version with GAO." Email from Protester's Counsel to Agency and Intervenor's Counsel (May 4, 2016, 4:07 pm).

The Navy conducted its corrective action and again awarded the contract to Precise. Imagine One filed the instant protest (B-412860.4) on September 9, challenging the new award. Also on September 9, Imagine One filed a size status protest with the contracting officer arguing that Precise was not a small business for purposes of the issuance of the task order, based on the awardee's violation of the ostensible subcontractor rule; the contracting officer forwarded the protest to SBA on September 14.

On October 17, SBA dismissed Imagine One's size status protest as untimely. SBA Size Determination No. 2-2016-109 (Oct. 17, 2016), at 1. The SBA found that the RFP, which anticipated the issuance of a task order under a multiple award ID/IQ contract, did not require offerors to recertify their small business status. Id. Consequently, offerors were presumed to be small businesses based on their size status at the time of award of the ID/IQ contracts. Id. For this reason, the SBA concluded that Imagine One could not file a timely post-award protest concerning Precise's compliance with the ostensible subcontractor rule. Id. at 1-2

On October 11, the Navy filed its report responding to the instant protest (B-412860.5), which included Precise's FPR. In its comments on the agency report, Imagine One filed a supplemental protest (B-412860.5) which noted that the awardee's proposal reflected a change to its proposed key personnel that appeared to reduce its reliance on its proposed large business subcontractors. Protester's Comments (Oct. 21, 2016) at 3-5, 18-19. The protester argued that because the issue of Precise's reliance on its proposed subcontractor was not addressed in an evaluation notice (EN) during discussions, the revision of this aspect of the awardee's proposal suggested an improper disclosure of the protester's argument outside the protective order. Id.

On October 31, the Navy filed its supplemental report addressing the new issues raised in Imagine One's comments and supplemental protest, including the allegation regarding an improper disclosure of the ostensible subcontractor rule argument to Precise. The Navy filed declarations from the relevant evaluators (aside from one who was unavailable), which stated that the agency did not disclose to Precise the allegations raised in Imagine One's supplemental protest. Supp. MOL at 13-14; AR, Tab 39, Decls. of Source Selection Team Members. The

intervenor's comments on the supplemental agency report disclosed the facts, set forth above, regarding the disclosure of the information to Precise. Intervenor's Comments (Nov. 7, 2016) at 5-6.<sup>14</sup>

Based on the record set forth above, we agree with Imagine One that counsel for Precise improperly disclosed to their client information received pursuant to the protective order issued by our Office. We note that the disclosure here concerned the protester's arguments regarding the awardee's proposal; thus the disclosure did not involve proprietary information regarding the protester or the agency's source selection information. Had the parties further pursued the matter of disclosing the ostensible subcontractor allegation, it may well have been an appropriate matter for disclosure outside the protective order.

Nonetheless, regardless of whether the information covered by the protective order might have been appropriate for release, counsel for the awardee did not seek or receive approval from the other parties prior to disclosing this information. Our protective order does not permit counsel admitted to the order to make unilateral decisions as to what information may be released to parties outside the order. Further, such unilateral action undermines the essential role that protective orders play in our Office's bid protest process, which is to facilitate pursuit of a protest by a protester through counsel while also ensuring that proprietary and source selection sensitive information is protected. Our Office will separately pursue the matter of the violation of the protective order with counsel for Precise to determine whether the imposition of sanctions is appropriate.

We next address whether the violation provides a basis to sustain the protest. Imagine One raises three primary arguments as to why the protest should be sustained as a result of this disclosure.

First, Imagine One argues that the improper disclosure of the information aided Precise in revising its FPR with regard to the allocation of key personnel between itself and its large business subcontractors. The protester contends that the awardee was improperly allowed to make revisions outside the scope of ENs and request for FPR, and further argues that if Imagine One had been allowed to do the same, it would have improved its proposal. For reasons addressed below in our consideration of whether discussions were improper, we find no merit to this argument because the instructions to offerors did not limit such revisions.

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<sup>14</sup> Following the filing of the protester's and intervenor's supplemental comments, our Office requested that the intervenor provide further briefing regarding the disclosure of information to its client. The protester and agency were permitted to file comments on the intervenor's response.

Second, Imagine One argues that the improper disclosure allowed Precise to amend its proposal, thereby putting it in a better position to defend against Imagine One's size protest to SBA. As discussed above, however, Imagine One filed a size status protest with SBA concerning Precise's alleged reliance on its large business subcontractors in violation of the ostensible subcontractor rule, and this protest was dismissed as untimely. In effect, regardless of whether Precise received an advantage as a result of its receipt of improperly-disclosed information, this advantage could not be the basis for a timely size status protest by Imagine One. Thus, the improper disclosure could not have affected Imagine One's ability to file and pursue a size status protest.<sup>15</sup>

Third, Imagine One argues that the improper disclosure allowed Precise to amend its proposal, thereby avoiding the "substantial chance that the Contracting Officer would have referred the matter to the SBA for review." Protester's Comments (Nov. 14, 2016). To the extent that the protester argues that the improper disclosure of information to the awardee allowed it to revise its proposal and thereby avoid or better defend against a potential size status protest filed by the contracting officer, we must address whether the actions by intervenor's counsel constitutes a prejudicial violation of procurement law or regulation which merits sustaining the protest. See 31 U.S.C. § 3552(a) (GAO reviews alleged violations of procurement laws and regulations); Armed Forces Hospitality, LLC, B-298978.2, B-298978.3, Oct. 1, 2009, 2009 CPD ¶ 192 at 9-10 (GAO will sustain a protest only where a violation of a procurement law or regulation results in prejudice to the protester).

Imagine One does not specifically argue that the improper disclosure violated any procurement law or regulation.<sup>16</sup> As noted above, the record shows that the improper disclosure was made by counsel for Precise, and did not involve the Navy. Under the circumstances here, we conclude that the issues arising from the improper disclosure by intervenor's outside counsel is analogous to a private dispute between parties that does not involve improper government action. See The GEO Grp., Inc., B-405012, July 26, 2011, 2011 CPD ¶ 153 at 5-6 (in the context of an alleged organizational conflict of interest or PIA violation, a disclosure of information that occurred between two companies without the procuring agency's

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<sup>15</sup> Imagine One argues that the SBA ruling was in error regarding timeliness, and further contends that if the awardee had not been allowed to revise its proposal, the protester "very likely would have" appealed the SBA decision. Protester's Comments (Nov. 14, 2016) at 9. We conclude that the possibility of the protester's decision to file an appeal of the adverse ruling by SBA, as well as the prospect for a successful appeal, is too remote to demonstrate that Precise was prejudiced by the improper disclosure of information.

<sup>16</sup> For example, the protester does not contend that there was a violation of the Procurement Integrity Act (PIA), 41 U.S.C. §§ 2101-2107.

involvement is a private dispute); Hendry Corp., B-400224.2, Aug. 25, 2008, 2008 CPD ¶ 164 at 3 (GAO will generally not review a protester's allegation that the awardee will violate a non-compete agreement, as it concerns a private dispute that does not involve government action). Our Office generally does not review disputes between private parties that do not involve the procuring agency; we therefore find no basis to sustain the protest. See Ellwood Nat'l Forge Co., B-402089.3, Oct. 22, 2010, 2010 CPD ¶ 250 at 3-4.<sup>17</sup>

In sum, we conclude that outside counsel for Precise improperly disclosed information covered by a protective order to the intervenor. On the record here, however, we find no basis to conclude that this disclosure violated any procurement law or regulation, and therefore find no basis sustain the protest.

### Improper Discussions

Finally, Imagine One argues that the Navy conducted improper and unequal discussions with Precise during corrective action by allowing the awardee to revise its proposal outside the scope of the instructions provided to offerors during those discussions. For the reasons discussed below, we find no basis to sustain the protest.

With regard to competitions for task and delivery orders under ID/IQ contracts, FAR § 16.505 does not establish specific requirements for discussions; exchanges with offerors under task order competitions, like other aspects of such a procurement, must be fair, equal, and not misleading. CGI Fed. Inc., B-403570 et al., Nov. 5, 2010, 2011 CPD ¶ 32 at 9. Nonetheless, our decisions regarding discussions in the context of negotiated procurements under FAR part 15 provides useful guidance, here. In general, when an agency opens or reopens discussions with offerors, the offerors may revise any aspect of their proposals, including portions of their proposals which were not the subject of discussions. Velos Inc., et al., B-400500 et al., Nov. 28, 2008, 2010 CPD ¶ 3 at 11. In appropriate circumstances, however, agencies may limit the revisions that offers may make to their proposals following discussions. DAE Corp., B-259866, B-259866.2, May 8, 1995, 95-2 CPD ¶ 12 at 4. If an agency limits the scope of revisions to offerors' proposals, the agency may not accept revisions that go beyond that scope if other offers were not provided the same opportunity. Resource Consultants, Inc., B-293073.3 et al., June 2, 2004, 2005 CPD ¶ 131 at 7-8.

Here, the Navy's instructions to offerors during discussions directed offerors to limit their EN responses to key personnel matters, as follows:

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<sup>17</sup> We note that paragraph 9 of our Office's protective order provides as follows: "A party whose protected information is improperly disclosed shall be entitled to all remedies under law or equity, including breach of contract."

2. The Government intends to hold discussions for the PMA231 Project Management Support Services requirement. Per reference (b), the Government intends to take corrective action, this corrective action is limited to the weaknesses, significant weaknesses, deficiencies and cost issues related to the key personnel. The Offeror is requested to submit a written response to the issues stated in the Evaluation Notices . . . . If EN response results in a change to your proposal related to key personnel only, please submit a proposal change page with your response. If EN response results in a change to your P6 ([contract line item number] Breakout Spreadsheet) related to key personnel only, please submit a revised P6 with your response. Responses to ENs should be labeled with the associated EN number for tracking purposes.

AR, Tab 12, Imagine One Discussions Letter (July 11, 2016), at 1.

Following discussions, the Navy requested FPRs from offerors, and provided the following instructions, which again directed offerors to limit their proposal revisions to key personnel matters:

2. Per reference (b), “At the conclusion of discussions, offerors in the competitive range will be able to submit proposal revisions to the technical and cost volumes solely regarding the key personnel.” Thus, any revisions made to the Technical, Past Performance, or Cost Volumes shall be made related to key personnel. No other changes will be evaluated.”

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5. Should Imagine One make any changes or updates to its existing proposal in the FPR pertaining to key personnel, adequate supporting documentation in accordance with Section L must be provided to allow for an assessment of the changed or updated information. . . .

Id., Imagine One Request for FPR (Aug. 16, 2016) at 1.<sup>18</sup>

Imagine One argues that the instructions in the request for FPRs limited offerors to proposal revisions relating to the scope of the ENs; in effect, the protester argues

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<sup>18</sup> Letters with identical instructions were sent to Precise. See AR, Tab 13, Precise Discussions Letter (July 11, 2016), at 1-2; id., Precise Request for FPR (Aug. 16, 2016) at 169.

that offerors were restricted to making changes relating to key personnel, and were further restricted to making changes to key personnel relating to the concerns specifically identified in ENs. The protester argues that because the Navy did not issue Precise an EN regarding the allocation of the awardee's key personnel between itself and its proposed subcontractors, it was not permitted to revise this aspect of its proposal. Imagine One further contends that, had the agency allowed all offerors to revise any aspect of their proposals regarding key personnel, the protester would have substituted certain key personnel to reduce its proposed cost, thereby improving its prospect for award. Protester's Comments (Oct. 21, 2016) at 20.

The Navy and Precise argue that offerors were allowed to make any revisions in their FPRs regarding key personnel. We agree. Although the ENs directed offerors to the agency's concerns regarding key personnel, nothing in the instructions provided by the agency during discussions or in the request for FPRs expressly stated that offerors were restricted to making changes regarding the ENs. Instead, the instructions in the request for FPRs directed offerors to provide supporting documentation to any changes made regarding key personnel. AR, Tab 12, Imagine One Request for FPR (Aug. 12, 2016), at 1. On this record, we find no basis to conclude that Precise's FPR improperly exceeded the scope of the instructions provided to offerors during discussions, or that the agency improperly accepted that FPR. See Solution One Indus., Inc., B-409713.3, Mar. 3, 2015, 2015 CPD ¶ 167 at 3-4 (denying protest where agency properly accepted price revisions to awardee's proposal, because the discussion instructions did not expressly limit such revisions).

As a related matter, Imagine One argues that the Navy lacked a reasonable basis to conduct discussions during corrective action. In this regard, the agency advised offerors that discussions would be conducted to address weaknesses, significant weaknesses, deficiencies and cost issues related to key personnel. AR, Tab 12, Imagine One Discussions Letter (July 11, 2016), at 1-2. The protester argues that the agency had no reason to conduct discussions because, in the protester's view, its own proposal was technically acceptable, and the other two offerors' proposals were not.

As our Office has held, the fundamental purpose of discussions is to afford offerors the opportunity to improve their proposals to maximize the government's ability to obtain the best value, based on the requirement and the evaluation factors set forth in the solicitation. AT&T Gov't Solutions, Inc., B-406926 et al., Oct. 2, 2012, 2013 CPD ¶ 88 at 17. Where an agency has reasonable concern that there were errors in the procurement, the agency has discretion to take corrective action, which may include the amendment of a solicitation and the request for and evaluation of another round of final proposals where the agency made the decision in good faith, without the intent to change a particular offeror's technical ranking or to avoid an award to a particular offeror. Networks Elec. Corp., B-290666.3, Sept. 30, 2002,



2002 CPD ¶ 173 at 3. Here, the protester does not demonstrate that the agency's decision to open discussions with offerors during the corrective action was tainted by bad faith, such as a specific intent to direct the award to Precise or avoid award to Imagine One. On this record, we find no basis to sustain the protest.

The protest is denied.

Susan A. Poling  
General Counsel