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Decision

Matter of: BTAS, Inc.; Innovative Technologies, Inc.

File: B-415810.4; B-415810.5; B-415810.6; B-415810.7; B-415810.8

Date: October 3, 2018

Jonathan D. Shaffer, Esq., Mary Pat Buckenmeyer, Esq., and Todd M. Garland, Esq., Smith Pachter McWhorter PLC, for BTAS, Inc.; and Robert G. Hanseman, Esq., Sebaly Shillito & Dyer, for Innovative Technologies, Inc., the protesters.
J. Hunter Bennett, Esq., Kayleigh M. Scalzo, Esq., Tyler Evans, Esq., and Evan R. Sherwood, Esq., Covington & Burling, LLP, for Oasis Systems, LLC, the intervenor.
Colonel C. Taylor Smith, Lieutenant Colonel Damund E. Williams, Thomas J. Faulconer, Esq., and Sean B. Brady, Esq., Department of the Air Force, for the agency.
Pedro E. Briones, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably eliminated protester from consideration for award where its cost proposal failed to conform to material terms of the solicitation.
 2. Protest of agency's cost realism analysis and adjustment to the protester's proposed costs is denied where the record shows that the cost evaluation and source selection decision were reasonable and consistent with the terms of the solicitation.
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DECISION

BTAS, Inc., of Beavercreek, Ohio, and Innovative Technologies, Inc. (ITC) of Dayton, Ohio, protest the issuance of a task order to Oasis Systems, LLC, of Lexington, Massachusetts, under request for proposals (RFP) No. 38, issued by the Department of the Air Force for engineering, professional, and administrative support services (EPASS). The protesters challenge the agency's cost evaluations.

We deny the protests.

BACKGROUND

The Air Force issued the RFP on March 3, 2017, pursuant to Federal Acquisition Regulation (FAR) subpart 16.5, to vendors holding indefinite-delivery, indefinite-quantity

(IDIQ) contracts under the General Services Administration's One Acquisition Solution for Integrated Services (OASIS) Small Business Pool 6.¹ Agency Report (AR), Tab 3, RFP at 1-3.² The solicitation, which was amended a number of times, contemplated the issuance of a cost-plus-fixed-fee (CPFF) task order with cost reimbursable line items, to provide EPASS services to the Air Force Life Cycle Management Center, Business Enterprise Systems (BES) Directorate. Id.; AR, Tabs 4-8, RFP amends. Offerors were to submit separate technical and cost proposal volumes. AR, Tab 12, RFP attach. 4, Instructions to Offerors (ITO) § 6.1, at 4.

The solicitation provided for award using a down-select process, to the offeror whose proposal was evaluated as technically acceptable with the lowest total evaluated cost (TEC).³ AR, Tab 13, RFP attach. 5, Evaluation (Eval.) Criteria §§ 3.0-3.2.4, at 5-10. First, technical proposals would be evaluated on an acceptable/unacceptable basis under three subfactors: human resources management, contract transition, and technical capability.⁴ Id. § 3.1, at 5-8. Second, the technically acceptable proposals would then be ranked by their proposed cost. Id. § 3.2, at 8. Third, the two lowest cost proposals would be evaluated for price reasonableness, unbalanced pricing, and cost realism. Id. Fourth, if those two proposals were no longer the lowest cost after the cost evaluation and any most probable cost (MPC) adjustments, they would be put aside and the next lowest cost proposal would be evaluated. Id. This process would continue until either two proposals were evaluated with TECs lower than the next lowest cost proposal, or until only one technically acceptable proposal remained with a reasonable, balanced, and realistic TEC. Id. The task order would be issued to the offeror whose proposal had the lowest TEC or to the remaining offeror whose cost proposal did not require discussions. Id. The RFP stated that the Air Force intended to make award without discussions, but reserved the agency's right to establish a competitive range and hold discussions. Id. § 1.2, at 2; § 1.4, at 4.

¹ OASIS is a multiple-award IDIQ contract that provides a governmentwide procurement vehicle for ordering a broad range of professional services. See www.gsa.gov/oasis (last visited Sept. 30, 2018). Our references hereafter to Oasis are to the awardee (Oasis Systems), not to the OASIS IDIQ contracts.

² The Air Force filed separate agency reports in response to these protests. For ease of reference, our citations are to the agency report, including the contracting officer's statement (COS), memorandum of law (MOL), and relevant evaluation record submitted in response to BTAS's protest (B-415810.4), unless stated otherwise.

³ Although the RFP stated lowest "total evaluated price," we use the term cost because the RFP provided for award of a CPFF task order with cost reimbursable line items.

⁴ The RFP advised that an unacceptable rating under any subfactor would render the entire proposal unacceptable and ineligible for award, and that only technically acceptable proposals would be evaluated for cost/price. RFP Eval. Criteria §§ 3.0-3.1, at 5.

Level of Effort and Cost Proposals

The RFP specified a fixed level of effort (LOE) for the entire performance period, which included a 6-month base period, four option years, and six 1-month options periods. RFP at 1; AR, Tab 16, RFP attach. 8, Contract Cls. at 9-11. The LOE listed the required labor categories by skill and security clearance levels, number of labor hours, performance locations, and BES division and program. AR, Tab 11, RFP attach. 3, LOE. The labor and performance requirements were described in the RFP's performance work statement (PWS). AR, Tab 9, RFP attach. 1, PWS. The LOE was provided both as an attachment to the RFP and restated under the solicitation's "CPFF LOE" (i.e., labor) contract line item number (CLIN), No. 0001.⁵

For each labor category, offerors were to propose a direct labor rate, as well as separate percentage rates for the offeror's fixed fee, fringe benefits, overhead, and general and administrative (G&A) expenses, using electronic "uniform pricing template" spreadsheets provided with the RFP. RFP ITO §§ 17.2.4-17.2.4.2, at 15-16; see AR, Tab 14, UPT. Based on the offeror's proposed rates, and the labor hours and formulas embedded in the spreadsheets, the UPT would then calculate for each labor category: the total proposed cost (less fixed fee); the fully burdened labor rate (less fee); the fixed fee amount (per hour and overall); and the total CPFF. See RFP ITO §17.2.4.2, at 16 (items calculated); AR, Tab 14, UPT. The spreadsheets would also calculate: the total proposed labor cost and total fixed fee by performance period and location; the proposed CLIN costs for each performance period; and the offeror's total proposed cost for the entire task order. See id. The contract access fee (CLIN No. 0003) would be calculated at 0.10 percent of the total task order cost. RFP ITO § 17.2.4.1, at 15. The RFP provided that for award purposes, the TEC would be the sum of all CLINs for all performance periods. RFP Eval. Criteria § 3.2.4, at 10.

In addition to completing the UPT, offerors were to provide a comprehensive narrative describing their basis of estimates, assumptions, and proposed escalation rate, among other things. See RFP ITO §§ 17.1-17.2.3.5, at 10-15. All proposed subcontractors were also required to submit separate cost volumes for their portion of the effort. Id. § 17.2.2.1, at 12.

Cost Evaluation

The RFP stated that the agency would perform a cost realism analysis using one or more of the cost analysis techniques under FAR section 15.404-1(d), to determine whether an offeror's proposed rates indicated a clear understanding and sound

⁵ The RFP included three additional CLINs: a not-separately-priced CLIN for data (No. 0002); a cost reimbursement CLIN for a contract access fee (No. 0003); and a cost reimbursement CLIN for travel and other direct costs (ODCs), capped at specified amounts for each performance period (No. 0004). AR, Tab 10, RFP attach. 2, CLINs, at 1-3; Tab 14, RFP attach. 6, Uniform Pricing Template (UPT), Summ. Sheet.

approach to satisfying the solicitation requirements, and whether the proposed labor escalation and indirect factors were realistic. RFP Eval. Criteria § 3.2.3, at 9. With respect to direct labor rates, the RFP provided that the agency would make upward MPC adjustments to proposed rates that were lower than the government's estimated (or benchmark) rate, where the offeror failed to convincingly substantiate that it could successfully perform the contract requirements and retain highly qualified personnel at the rates proposed. Id. § 1.3, at 4. The RFP advised that the agency would not make MPC reductions in the event an offeror's proposed direct labor rates were higher than the government's estimates. Id.

With respect to indirect labor rates, the RFP stated that the agency would make upward MPC adjustments to rates found unrealistic, but would not make MPC indirect rate reductions. Id. The solicitation provided that "[u]nless an Offeror provides extensive substantiation, current rates shall be proposed at time of submission (e.g. Forward Price Rate Agreement (FPRA), Provisional Billing Rates (PBR))." Id.

The RFP reserved the agency's right to reject any proposal that was evaluated as unrealistic in terms of commitments; took exceptions to the contract terms and conditions; or "is unrealistically low in cost/price when compared to the sum of the individual direct labor rates or the TE[C], after MPC adjustments, such that the proposal is deemed to reflect a failure to comprehend the complexity of contract requirements or poses an unacceptable risk to contract performance." Id. § 1.3, at 2. Unacceptable risk was defined as not allowing the offeror to fulfill the task order requirements at the costs proposed; an unrealistically low cost proposal was defined as a proposal requiring an upward MPC adjustment greater than or equal to 15 percent under the cost realism analysis process described below. Id.

The solicitation also provided that:

While proposals requiring MPC adjustments greater than or equal to 15.00% of total proposal [cost] are unrealistically low, per se, proposals requiring less than a 15.00% MPC adjustment may still be considered unrealistically low if the [proposed cost] is deemed to reflect a failure to comprehend the complexity of the contract requirements or poses an unacceptable risk to contract performance.

Id. § 1.3, at 3. Offerors were advised that unless discussions were held, cost proposals evaluated as unrealistically low would be rejected. Id.

Initial Evaluation

The Air Force received proposals from 12 offerors by the April 7 deadline. AR, Tab 94, Source Selection Decision Document (SSDD), at 7. Eight proposals were found technically acceptable, including those of BTAS, Oasis, and ITC, whose proposals were ranked the fifth, sixth, and seventh lowest cost, respectively. Id. at 7-11. ITC's costs

were found reasonable and balanced, but the proposal was eliminated as non-compliant with the RFP's cost instructions.⁶ Id. at 10. BTAS's costs were evaluated as reasonable and balanced, but unrealistic based on its proposed direct labor rates. Id. at 11. Oasis' costs were found reasonable and balanced, but unrealistic based on its proposed indirect labor rates. Id. at 7. As discussed below, the agency established a competitive range that included only Oasis' proposal and conducted one round of discussions, which resulted in the agency making upward MPC adjustments to Oasis' indirect rate and ultimately finding the cost proposal realistic. Id. at 11-13. The agency subsequently notified BTAS and ITC that they were eliminated from the competition. Id. at 10.

Prior Protests and Corrective Action

BTAS and ITC timely protested to our Office their elimination from the competitive range and challenged the Air Force's cost evaluations and cost realism analyses. BTAS Protest B-415810, Dec. 20, 2017; ITC Protest B-415810.2, Dec. 20, 2017.

Prior to submitting agency reports in response to the protests, the Air Force advised the parties (separately) that:

After careful consideration of [the protester's] allegations and the procurement record, the Agency has decided to take corrective action. Specifically, the Agency will void the current competitive range determination, re-evaluate all offerors' (including [the protester's]) compliance with the Instruction[s] to Offerors and cost/price proposals, and make a new competitive range determination if required. The Agency may also take any other corrective action it deems appropriate.

Notices of Corrective Action, B-415810 & B-415810.2, Jan. 19, 2018, at 1.

BTAS filed an objection to the proposed corrective action, claiming that the agency's notice was vague and provided no assurance that BTAS would be included in the competitive range, or that a competitive range would even be established. E-mail from BTAS to Air Force & GAO, Jan. 22, 2018. ITC did not raise any objections to the proposed corrective action.

Our Office dismissed the protests because the Air Force's corrective action rendered them academic. BTAS, Inc., B-415810, Jan. 24, 2018 (unpublished decision); Innovative Techs., Inc., B-415810.2, Jan. 24, 2018 (unpublished decision). In our decision dismissing BTAS's protest, we explained to the protester that its objection was

⁶ The first, third, and fourth lowest cost proposals were also eliminated as non-compliant with the RFP's instructions; the second and eighth lowest cost proposals were found unrealistic. AR, Tab 94, SSDD, at 8-11.

premature and that dismissal was nevertheless appropriate, because the new award decision could result in the selection of BTAS's proposal. BTAS, Inc., supra, at 2.

Reevaluation and Award

The Air Force reevaluated the proposals of all 12 offerors; the same 8 proposals were found technically acceptable as before, including those of BTAS, Oasis, and ITC. AR, Tab 94, SSDD, at 14-15. ITC's proposal was once again eliminated from the competition for failing to comply with the RFP's cost instructions. Id. at 14. BTAS's proposal was again ranked the fifth lowest cost and found reasonable and balanced, but unrealistic. Id. at 15. Like the prior evaluation, Oasis' proposal was ranked sixth lowest cost and also found reasonable and balanced. Id. at 15-16. However, the Air Force did not reestablish a competitive range or conduct discussions with Oasis, but simply accepted the upward MPC adjustments to Oasis' indirect rate that the agency had made during the prior evaluation, and found Oasis' proposal realistic. See id. at 15-17.

BTAS' and Oasis's cost proposals were evaluated as follows:

	BTAS	Oasis
Proposed Cost	\$240,777,210	\$244,635,514
Total Evaluated Cost	\$277,206,300	\$272,835,885

AR, Tab 92, Proposal Analysis Report (PAR), at 119, 125.

The Air Force issued the task order to Oasis on June 15, 2018. COS at 19. BTAS and ITC filed the instant protests after receiving written debriefings.⁷

DISCUSSION

BTAS and ITC challenge the Air Force's reevaluation of their cost proposals. Although we do not address each of protesters' arguments, we have considered all of their contentions and find none furnishes a basis to sustain their protests.⁸

⁷ The awarded value of the task order exceeds \$10 million, and therefore this protest is within our jurisdiction. See 41 U.S.C. § 4106(f).

⁸ For example, we decline to address BTAS's various complaints that the documents in the agency report conflict with the information provided to BTAS during the debriefing (see BTAS Comments & 2nd Supp. Protest (Comments) at 22-26), because the adequacy of the debriefing is a procedural matter that does not involve the validity of the contract award. The Ideal Sol., LLC, B-298300, July 10, 2006, 2006 CPD ¶ 101 at 3 n.2; see, e.g., DGC Int'l, B-410364.3, Apr. 22, 2015, 2015 CPD ¶ 136 at 5 (dismissing protester's arguments that the evaluation as explained in the agency report was

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ITC's Protest

ITC contends the agency's decision to exclude ITC's proposal from the competition was unreasonable and inconsistent with the terms of the solicitation. ITC Protest at 2, 6-10. ITC argues the Air Force's finding that ITC's cost proposal was non-compliant was based on the agency's misreading of the solicitation, and improper cost realism analysis (CRA) of labor rates proposed by ITC's subcontractors. Id. at 6-8.

At issue here, the Air Force found that two of ITC's proposed subcontractors did not properly substantiate their proposed indirect labor rates by submitting current actuals or adequate information. AR B-415810.5, Tab 43, PAR, at 108. For example, the agency found that while one subcontractor explained how it calculated its proposed indirect rate, the subcontractor's cost proposal did not substantiate the rate by providing current invoices or other information stating its actual indirect rates. Id. Similarly, the Air Force found that another ITC subcontractor generally stated that it uses "full corporate indirect rates (G&A and Overhead) methodologies" and "measures G&A and Overhead quarterly," but the subcontractor's cost proposal did not include any substantiation, explanation, build-up, or invoices to support its proposed indirect rates. Id. at 108-9; see AR B-415810.5, Tab 29, Subcontractor C Cost Prop., at 8.

ITC's arguments notwithstanding, we find the agency's assessments reasonable and consistent with the RFP's instructions. In reviewing protests challenging an agency's evaluation of proposals, we do not independently evaluate proposals. Rather, we review the record to determine whether the agency's evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. Serco Inc., B-406061, B-406061.2, Feb. 1, 2012, 2012 CPD ¶ 61 at 9. It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. CACI Techs., Inc., B-296945, Oct. 27, 2005, 2005 CPD ¶ 198 at 5. Any proposal that fails to conform to material terms of the solicitation may, as here, be considered unacceptable and not form the basis for an award. Gordon R.A. Fishman, B-257634.3, Nov. 9, 1995, 95-2 CPD ¶ 217 at 2.

Here, the RFP explicitly stated that all proposed subcontractors "must submit separate Cost/Price Volumes for their portion of the effort in accordance with the guidelines given to the Offeror." RFP ITO § 17.2.2.1, at 12 (emphasis added). In our view, this provision is unambiguous--proposed subcontractors were to follow the same instructions as offerors. These instructions included, with respect to proposed indirect rates, that if an offeror did not have a forward price rate agreement (FPRA) or PBR, the offeror was to submit its current billing rates and explain how its proposed rates were derived. Id. § 17.2.3.2, at 13. Specifically, the RFP provided that the offeror "shall submit" its most

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inconsistent with the information provided during the debriefing, since our Office is primarily concerned with the evaluation itself, not the debriefing).

current indirect rate invoices or information containing actual indirect rates, including for the 6 months prior to the release of the RFP. Id. The offeror could also submit recent accounting history (for multiple years, if available) to demonstrate the offeror's indirect rate calculations, including the base and labor pools used to determine the rate, and provide a narrative explanation. Id. at 14. Here, since neither ITC subcontractor had an FPRA, established PBR, or forward pricing rate proposal, they were required, but failed, to submit information substantiating their proposed indirect rates so that the Air Force could properly assess whether those rates were realistic. See AR B-415810.5, Tab 40, ITC Cost/Price Consensus Worksheet (Cost Eval.), at 6.

Nevertheless, ITC argues the Air Force was not required to evaluate the cost realism of ITC's subcontractor labor rates, because ITC's basis of estimate explained that it would be issuing fixed-price task orders to its proposed subcontractors. ITC Protest at 7. In this respect, ITC asserts that the FAR, "on its face," does not require a CRA for fixed-priced contracts, but only requires a CRA for cost reimbursement contracts. ITC Comments at 9-10, 17 (citing FAR § 15.404-1(d)). ITC claims that a number of RFP provisions support the protester's view. For example, ITC points out that section 17.2.2.1 of the RFP's instructions states that the offeror shall provide a cost/price evaluation for all subcontractors, and section 17.2.3.2 states that "offerors may use any technique to support realism." Id. at 10-11. According to ITC, these provisions "left clear room," or "latitude," for an offeror to use any method for substantiating either the cost or price realism of its subcontractor's proposed rates, and gave "no indication of any absolute Agency requirement" to perform a CRA at the subcontractor level. Id. at 15. In the protester's view, ITC's own price realism analysis of its subcontractors' proposed rates was "suitable and sufficient," and the Air Force ignored the fact that ITC's subcontractors provided sufficient data in that regard. See id. at 10; ITC Protest at 7.

These arguments lack merit. As the Air Force correctly points out, because the RFP provided for award of a cost reimbursable contract, the agency was required by the FAR to perform a cost realism analysis, and this FAR requirement applies regardless of the type of contractual relationship an offeror proposes with its subcontractors. See MOL B-415810.5 at 9. Moreover, ITC overlooks the plain language of the RFP, which required a subcontractor's cost proposal to include sufficient information to substantiate the realism of its proposed direct and indirect labor rates; the solicitation did not qualify this requirement based on whether an offeror proposed a fixed-price or cost reimbursable contract with the proposed subcontractor. See RFP ITO § 17.2.2.1, at 12; § 17.2.3.2, at 13. This is consistent with our long held view that an offeror is responsible for affirmatively demonstrating the merits of its cost proposal, including supporting its proposed labor rates and cost elements such as overhead and indirect rates. See General Offshore Corp.-Riedel Co., a Joint Venture, B-271144.2, B-271144.3, July 2, 1996, 96-2 CPD ¶ 42 at 12; Titan Corp., B-260557.2, July 18, 1995, 95-2 CPD ¶ 89 at 6; Radian, Inc., B-256313.2, B-256313.4, June 27, 1994, 94-2 CPD ¶ 104 at 8.

We also have no reason to question the Air Force's finding that ITC did not comply with the RFP's instructions to propose one fixed fee. See AR B-415810.5, Tab 43, PAR, at 109; Tab 40, ITC Cost Eval., at 7; RFP ITO § 17.2.3.4, at 15. At issue here, ITC's cost proposal, including its UPT spreadsheets, proposed separate fees for prime and subcontract labor, even though the RFP explicitly instructed offerors to propose one fee. See id.; AR B-415810.5, Tab 23, ITC Cost Proposal § 4.11.3, at 49; § 4.11.5, at 50 ("In the UPT, for labor categories assigned to one of our subcontractors, the fee is listed as [DELETED]% in column 'K', as opposed to the [DELETED]% we are applying to work performed by ITC."); Tab 24, ITC UPT, at 1. ITC contends, among other things, that the RFP did not forbid an offeror from proposing a different fee for subcontractors or providing such information. ITC Comments at 22. In any event, ITC maintains the agency could have disregarded any additional information ITC provided in its cost proposal regarding its subcontractor's fee, or that "an easy remedy would [have been for the agency] to change the amount in column K [of ITC's UPT spreadsheets] to apply the same [DELETED]% fee" to subcontractor work.⁹ Id. at 23.

Contrary to ITC's mistaken belief, it had the burden of submitting an adequately written cost proposal that complied with the solicitation's cost instructions.¹⁰ The Air Force was not required to determine ITC's proposed fee by changing amounts or rearranging columns in ITC's pricing spreadsheets, or by disregarding any extraneous information in ITC's cost proposal that may have been inconsistent with the RFP. See, e.g., Technatomy Corp., B-411583, Sept. 4, 2015, 2015 CPD ¶ 282 at 6 (denying protest of agency's exclusion of protester's proposal from a FAR subpart 16.5 task order competition, notwithstanding protester's assertion that it provided enough information in its incorrect pricing template to permit the agency to calculate the protester's fully-burdened labor rates). Proposals with significant informational deficiencies may be excluded, whether the deficiencies are attributable to either omitted or merely inadequate information addressing fundamental factors. American Sys. Corp., B-409632, June 23, 2014, 2014 CPD ¶ 188 at 4 ("An agency is not required to adapt its

⁹ The RFP permitted offerors to make adjustments to the UPT (for example, by adding additional rows or columns to worksheets), if needed to reflect additional cost elements consistent with their "Accounting/Estimating System." RFP ITO § 17.2.4, at 15. For example, offerors could insert an additional column to worksheets for a subcontractor handling fee. Id.

¹⁰ We note that a number of RFP provisions warned offerors that cost proposals must be sufficiently detailed to demonstrate that proposed costs were reasonable, balanced, and realistic; that the "burden of proof" for substantiating the realism of all proposed costs rested with the offeror; that the proposal must include all data and information requested; that the agency needed this information in order to properly evaluate the reasonableness, realism, and balance of the offeror's proposed costs; and that failure to follow the instructions or submit the required information may render the proposal non-responsive and ineligible for award. See RFP ITO §§ 1.0-1.2, at 2; § 17.1, at 10; § 17.2.3.2, at 13; Eval. Criteria §§ 1.3 1.5, at 4; § 3.2.6, at 10.

evaluation to comply with an offeror's submission; even if the agency could have extrapolated the missing information to allow for a full cost/price evaluation, the question is not what the agency could possibly do to cure a noncompliant submission, but rather, what it was required to do.”).

For these reasons, we conclude that the Air Force reasonably eliminated ITC's proposal from the competition, and we deny ITC's protest accordingly.¹¹ Orion Tech., Inc., B-405077, Aug. 12, 2011, 2011 CPD ¶ 159 at 3-7 (denying protest where the agency reasonably eliminated the protester's proposal from award for failing to provide cost/pricing information as required by the RFP for teaming members); Mission1st Grp., Inc., B-404811.3, B-404811.6, June 2, 2011, 2011 CPD ¶ 115 at 6-7 (denying protest where agency reasonably found that the protester failed to provide required information regarding its team members' labor rates).

BTAS' Protest

BTAS challenges the Air Force's cost evaluation, arguing that the cost realism analysis was flawed and inconsistent with the terms of the solicitation. See BTAS Protest at 11- 39. BTAS also claims that the agency evaluated BTAS's and Oasis' cost proposals disparately. See BTAS Comments at 3, 16-17, 30. In this respect, BTAS alleges that the Air Force was inconsistent in how it applied its CRA methodology, particularly with respect to fringe benefits. See id. at 3, 30; Supp. Comments & 3rd Supp. Protest (Supp. Comments) at 4-7.

When an agency evaluates proposals for the award of a cost-reimbursement contract or task order, an offeror's costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. FAR §§ 16.505(b)(3); 15.305(a)(1); TeleCommunication Sys., Inc., B-413265, B-413265.2, Sept. 21, 2016, 2016 CPD ¶ 266 at 10. 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.¹² FAR §§ 15.404-1(d)(1), 16.505(b)(3);

¹¹ We dismiss ITC's allegations that the agency was biased, “viewed ITC as an adversary,” or had pre-selected the awardee. See ITC Comments at 2-4, 24-25. Government officials are presumed to act in good faith, and a protester's contention that contracting officials are motivated by bias or bad faith thus must be supported by convincing proof; we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Career Innovations, LLC, B-404377.4, May 24, 2011, 2011 CPD ¶ 111 at 7-8. The record here does not contain, and ITC has not adduced, any evidence of wrongdoing or bad faith on the part of the agency.

¹² The end product of a CRA is the “most probable cost” that the agency realistically expects to pay for the offeror's proposed effort, and it is this cost, not the offeror's proposed cost, that must be the basis of the agency's source selection determination. FAR § 15.404-1(d); Innovative Test Asset Sols., LLC, B-411687, B-411687.2, Oct. 2, 2015, 2016 CPD ¶ 68 at 14 n.19.

Solers Inc., B-409079, B-409079.2, Jan. 27, 2014, 2014 CPD ¶ 74 at 4. An agency's cost realism analysis requires the exercise of informed judgment, and we review an agency's judgment in this area only to see that the cost realism analysis was reasonably based and not arbitrary. TeleComm. Sys., Inc., supra.

We note, as an initial matter, that the contemporaneous evaluation record is well documented. The record, which is extensive, includes: separate consensus worksheets for each offeror documenting the cost/price evaluation team's (CPET) assessment of direct and indirect labor rates and assumptions--including by performance period, location, and prime/subcontractor labor; hundreds of pages recording the CPET's MPC adjustments of each offeror's fully-burdened labor rates; a lengthy proposal analysis report of the technical and cost evaluations; a thorough source selection decision document; a detailed government cost estimate (GCE); summaries of the contracting officer representatives' surveillance reporting for the incumbent contractors (which includes BTAS and Oasis); an analysis report of incumbents' fringe benefits; and memoranda documenting, for the record, the agency's corrective action.¹³

Based on our review of this record, we find the Air Force's cost evaluation and cost realism analysis reasonable and consistent with the terms of the solicitation.

Cost Realism Analysis

As set forth above, the RFP established a fixed level of effort and required offerors to propose, for each labor category, a direct rate and separate percentage rates for fixed fee, fringe benefits, overhead, and G&A, using the UPT spreadsheets. RFP ITO §§ 17.2.4-17.2.4.2, at 15-16. Given the number of labor categories, with 3 levels of experience and 2 levels of security clearances, spread across 6 different performance locations and 11 performance periods, an offeror had to propose--and the agency evaluated--over 16,000 direct and indirect labor rates. See AR, Tab 14, UPT; see, e.g., AR, Tab 91, BTAS Cost Eval., at 18-155.

The RFP set forth a two-step process for assessing the cost realism of direct and indirect labor rates using offerors' (including their subcontractors') UPT spreadsheets. RFP Eval. Criteria § 3.2.3, at 9-10. Under Step 1, the agency would compare the proposed hourly rates (except fee) to the government's benchmark rates and make upward MPC adjustments as necessary. See id. at 9; see, e.g., AR, Tab 91, BTAS Cost Eval. at 9, 18-155. The sum of all the proposed fully-burdened rates (except fee) would then be evaluated against the sum of all the adjusted fully-burdened rates.¹⁴

¹³ See AR, Tab 84, Corrective Action Mem.; Tab 85, Surveillance Reps.; Tab 87, Fringe Rate Analysis; Tab 88, GCE; Tab 91, BTAS Cost Eval.; Tab 128, Oasis Cost Eval.

¹⁴ That is, the individual fully-burdened labor rates were summed at the CLIN level, which included all of the offeror's and subcontractors' rates. AR, Tab 91, BTAS Cost Eval., at 7; Tab 128, Oasis Cost Eval., at 7.

RFP Eval. Criteria § 3.2.3, at 9. If the difference between the two sums was 15 percent or more, then the offeror's proposal would be found unrealistic and not considered further; if the difference was below 15 percent, then the proposal would proceed to Step 2. Id. Step 2 was essentially the same, except that the CRA would be based on the total number of hours for each labor category (as opposed to the hourly rate under Step 1).¹⁵ Id. at 9-10. Like Step 1, if the difference between the sum of the total proposed fully-burdened rates and the sum of the total adjusted fully-burdened rates was 15 percent or more under Step 2, then the proposal would be found unrealistic. Id.

Although the RFP provided for the evaluation of direct and indirect labor rates, and offerors were to propose a percentage fringe benefit rate, the solicitation did not set forth any particular process for assessing fringe benefits. The CPET established fringe percentage ranges to assess the extent to which an offeror's direct labor rates could be considered realistic relative to the offeror's total compensation package. AR, Tab 88, GCE, at 52. According to the GCE, the agency "evaluate[d] direct labor rates with an awareness that Offerors providing lower fringe benefit percentages to their employees ultimately results in lower total compensation for the employee." Id. The GCE stated that:

If the cost team determined that an Offeror's indirect rates would negatively affect an Offeror's ability to hire and retain personnel, its direct rates were evaluated on a more stringent basis. If the cost team determined that an Offeror's indirect rates could help an Offeror hire and retain personnel, its direct rates were evaluated on a more lenient basis.

Id. at 52-53. The CPET determined that [DELETED] to [DELETED] percent was an average range for fringe benefit rates for the advisory and administrative services (A&AS) type work required here, based on the CPET's analysis of eight A&AS contractors' fringe rates (including BTAS and Oasis) across three different BES directorates. Id. at 53; see AR, Tab 87, Fringe Rate Analysis. For example, where an offeror's proposed fringe rate was between [DELETED] to [DELETED] percent, the CPET determined that direct labor rates up to [DELETED] percent less than the GCE benchmark labor rate would not affect an employee's decision to accept a position based on salary, and would not need to be upwardly adjusted (i.e., the direct labor rate would be found realistic). AR, Tab 88, GCE, at 52. In this respect, the CPET created a "fringe table" to determine how much an offeror's proposed direct labor rates could vary from the GCE, for the direct rates to be deemed realistic relative to the offeror's proposed fringe rate. Id.

¹⁵ According to the evaluation record, the purpose of Step 2 was to evaluate and develop the TEC based on the actual requirement. See, e.g., AR, Tab 91, BTAS Cost Eval., at 7.

Pre-Corrective Action Evaluation

Following the process described above, BTAS's cost proposal was evaluated as reasonable and balanced, but unrealistic after Step 1 of the CRA because the total MPC adjustment to BTAS's fully-burdened rates (less fee) exceeded the 15 percent ceiling of the CRA process. AR, Tab 94, SSDD, at 11. BTAS's cost proposal was not further evaluated, that is, it did not advance to Step 2 of the CRA. Id.

Oasis' direct labor rates were found reasonable, balanced, and realistic following both steps of the CRA. Id. However, while the total MPC adjustment to Oasis' fully burdened rates (less fee) was under 15 percent, its cost proposal was nevertheless found unrealistic because Oasis proposed an indirect rate based on [DELETED]. Id. The CPET found the lower fringe rate under this indirect rate structure was inconsistent with other Oasis task orders, could affect Oasis' ability to hire and retain highly qualified personnel, and posed an unacceptable risk of contract performance. Id. at 13. Nevertheless, the agency determined that this "deficiency could be simply corrected by choosing the rate pool that is commensurate with the ongoing task orders for work that is same or similar [and that the] deficiency could be corrected in less than one day" through discussions. See AR Tab 122, Competitive Range Determination, Dec. 12, 2017, at 7.

The Air Force established a competitive range that included only Oasis' proposal and sent an evaluation notice (EN) to Oasis expressing the agency's concerns about Oasis' proposed indirect rate. See AR, Tabs 123, Oasis EN, at 1-2. In response, Oasis proposed a different rate pool, which the agency also found unrealistic. See AR, Tab 124, Oasis EN Response, at 1; Tab 92, PAR, at 122. Thereafter, the CPET adjusted Oasis' proposed indirect rate to its current provisional billing rate for [DELETED] as approved by the Defense Contract Audit Agency (DCAA). AR, Tab 92, PAR, at 122; Tab 128, Oasis Cost Eval., at 12-13.

While BTAS's cost proposal otherwise had the second-lowest CRA adjustments among the four cost proposals evaluated, BTAS was not included in the competitive range because of the number of labor rates that were upwardly adjusted by more than 15 percent and therefore found unrealistic.¹⁶ AR Tab 122, Competitive Range Determination, Dec. 12, 2017, at 5-6. The agency determined that the magnitude of these adjustments showed that BTAS did not understand the requirement or labor market, or both. Id. As discussed above, BTAS protested its elimination from the competitive range and the Air Force took corrective action in response to the protest.

¹⁶ As noted above, the first, third, fourth, and seventh (ITC's) lowest cost proposals were eliminated as non-compliant with the RFP; the second and eighth lowest cost proposals were found unrealistic. AR, Tab 94, SSDD, at 8-11.

Post-Corrective Action Evaluation

Upon reevaluation, BTAS's cost proposal was again ranked the fifth lowest cost and found reasonable and balanced. AR, Tab 94, SSDD, at 15. Unlike the earlier evaluation, BTAS's proposal was found unrealistic following Step 2 of the CRA (it was previously found unrealistic following Step 1), because the MPC adjustments to BTAS's fully-burdened labor rates (less fee) exceeded the 15 percent ceiling of the CRA process.¹⁷ Id. at 15-16; AR, Tab 92, PAR, at 118-19. The CPET found that BTAS proposed a large number of labor rates that were significantly higher (and in some cases, significantly lower) than the GCE. AR, Tab 91, BTAS Cost Eval., at 13. The evaluators concluded that this, coupled with the data sources that BTAS relied on its cost proposal, did not instill confidence that BTAS understood the labor market or requirements, or both. Id. The CPET otherwise found that the indirect rates proposed by BTAS and its subcontractors were acceptable and consistent with their current DCAA-approved PBRs. Id. at 15.

Like the earlier evaluation, Oasis cost proposal was ranked sixth lowest cost and also found reasonable and balanced. AR, Tab 94, SSDD, at 15-16. Also like the earlier evaluation, the total MPC adjustment to Oasis' fully-burdened labor rates (less fee) were under 15 percent following Step 2 of the CRA. AR, Tab 92, PAR, at 125. However, the Air Force did not reestablish a competitive range or conduct discussions with Oasis regarding its indirect rate pool; rather, it accepted the upward adjustment to Oasis' indirect rate that the agency made during the prior evaluation. See AR, Tab 94, PAR, at 122; Tab 128, Oasis Cost Eval., at 12-13.

The percentages of total MPC adjustments to BTAS's and Oasis' fully-burdened labor rates were as follows:

	BTAS	Oasis
CRA Step 1	9.93%	12.56%
CRA Step 2	15.13%	11.53%

AR, Tab 92, PAR, at 118-19, 124-25. The Air Force determined that Oasis' cost proposal was realistic and that Oasis submitted the technically acceptable proposal with the lowest TEC. AR, Tab 94, SSDD, at 17.

¹⁷ The contracting officer states that upon reviewing the prior evaluations in response to the earlier protests, the agency discovered an error in its rate build-up that artificially inflated some of the benchmark rates in its initial cost estimates and affected the cost evaluations. COS at 7. The agency created a new cost estimate, including new benchmarks for direct labor rates and escalation, as well as new baselines for evaluating fringe benefits. See AR, Tab 88, GCE, at 1.

BTAS's Post-Corrective Action CRA Challenge

BTAS contends that the CRA methodology described above was unreasonable and applied disparately, resulting in improper MPC adjustments to BTAS's direct labor rates based on unstated evaluation criteria. See BTAS Comments at 3; Supp. Comments at 4-7. In this respect, BTAS complains that the fringe analysis method was "stated nowhere in the RFP . . . [n]or does the Evaluation Criteria even use the word 'fringe' in the entire document." Supp. Comments at 26. Moreover, BTAS asserts the method resulted in inconsistent MPC adjustments. Id. at 29 ("[A] 0.1% change in fringe rate (again, unstated in the RFP) could affect a [TEC] by as much [as] 2% or 3%."). According to BTAS, "the agency was apparently willing to accept offerors' stated fringe rates at face value, without requesting any data or requiring substantiation for the rates." Id. at 17. In addition, BTAS contends that the agency did not void its earlier competitive range determination, contrary to the corrective action proposed, and that the Air Force was required, but failed, to conduct discussions with both BTAS and Oasis. BTAS Comments at 3, 11 16.

The Air Force argues that it evaluated all offerors equally and in accordance with the solicitation. COS at 16. In this respect, the agency maintains that it did not evaluate cost proposals based on unstated evaluation criteria, that a CRA is inherently subjective, and that BTAS is conflating evaluation criteria with a subjective cost analysis. Id. at 28. The Air Force contends that it treated offerors consistently and fairly in its fringe rate analysis and MPC adjustments. See id. at 9, 16.

We find that the Air Force's cost evaluations, including its cost realism analyses, were reasonable and that BTAS's arguments to the contrary only reflect its disagreement with the agency's judgments. An agency is not required to conduct an in-depth cost analysis, see FAR § 15.404-1(c), or to verify each and every item in assessing cost realism; rather, the evaluation requires the exercise of informed judgment by the contracting agency. Cascade Gen., Inc., B-283872, Jan. 18, 2000, 2000 CPD ¶ 14 at 8. The analysis need not achieve scientific certainty; rather, the methodology employed must be reasonably adequate and provide some measure of confidence that the agency's conclusions about the most probable costs for an offeror's proposal are reasonable and realistic in view of other cost information reasonably available to the agency at the time of its evaluation. TeleComm. Sys., Inc., supra.

Notwithstanding BTAS' disagreement, we find the MPC adjustments and fringe rate analysis unobjectionable. Notably, BTAS does not meaningfully refute the Air Force's assertion that even if the agency adopted the CRA methodology and benchmarks suggested by the protester, BTAS's TEC would still be higher than Oasis' TEC. Compare COS at 9-10, with Supp. Comments at 20. In particular, BTAS fails to rebut the agency's arguments that even if it had not adjusted Oasis' indirect rate, or if the agency had adjusted BTAS's indirect rate by the same margin, BTAS's TEC would still be over \$15 million higher than Oasis's TEC. Compare 2nd Supp. COS at 2-3, with 2nd Supp. Comments at 5.

In any event, even if we were to find (which we do not) that the CPET's reliance on the fringe rate table as part of its CRA was improper or overly mechanical, as BTAS suggests, our Office has recognized that where, as here, a solicitation provides a cost model that specifies the labor mix and level of effort for offerors' proposals--thereby making offerors responsible for proposing costs based on their own rates, but not differing technical approaches--an agency may reasonably evaluate the rates proposed for those established labor categories based on other data, such as rates proposed by other offerors. See Energy Enter. Sols., LLC; Digital Mgmt., Inc., B-406089 et al., Feb. 7, 2012, 2012 CPD ¶ 96 at 9-10; Innovative Test Asset Sols., LLC, supra, at 13-17 (denying protester's cost realism challenge and finding reasonable the cost evaluators' use of a statistical modeling software to calculate average percentages of cost savings based on the evaluators' subjective assessment of likely cost savings). This is particularly reasonable here, where technical proposals were evaluated on a pass/fail basis and as stated above, the Air Force individually, and extensively, evaluated over 16,000 direct and indirect labor rates. Indeed, BTAS concedes that "[a]lthough the agency does not justify the percentages, it is within the agency's purview to determine thresholds for equitable comparison." Supp. Comments at 29.

Moreover, the record, in our view, supports the Air Force's arguments that it evaluated BTAS's cost proposal in the same manner as Oasis' cost proposal and that the mere fact that Oasis' cost adjustments were less than the protesters' cost adjustments does not evidence disparate treatment. See, e.g., Trailblazer Health Enters., LLC, B-406175, B-406175.2, Mar. 1, 2012, 2012 CPD ¶ 78 at 9 (protest of agency's cost realism analysis is denied where the difference in the cost realism adjustments to the protester's and awardee's proposals was not the result of unequal treatment by the agency, but resulted from the agency's recognition of differences with respect to the offerors' substantiation for their proposed approaches). Additionally, our Office has explained that an agency may reasonably adjust an offeror's proposed labor rates where the offeror--as the Air Force reasonably found here--fails to provide adequate detail to support its rates, and where the agency relies on reasonable sources of data to support its adjustments.¹⁸ See Science Applications Int'l Corp., Inc., B-408270, B-408270.2, Aug. 5, 2013, 2013 CPD ¶ 189 at 6-7.

In addition, contrary to BTAS's insistence, the fact that the Air Force made an upward MPC adjustment to Oasis' proposed labor rates, does not, by itself, mean that Oasis' technical proposal must have been materially deficient or ineligible for award.¹⁹ BTAS

¹⁸ In this respect, we find no reason to question the Air Force's determination that BTAS's market survey salary data (based on one source) was insufficient to substantiate BTAS's unrealistic direct labor rates, when compared to the CPET's benchmark rates that were based on multiple sources and data points. See BTAS Comments at 23-24; AR, Tab 91, BTAS Cost Eval., at 9; Tab 88, GCE, at 7-34.

¹⁹ BTAS does not otherwise substantively challenge the evaluation of Oasis' technical or cost proposal.

Comments at 7, 11 (“Oasis’ technical proposal must have relied on a staffing or personnel approach contrary to its cost proposal.”); Supp. Comments at 7-12 (insisting that “Oasis cannot meet the RFP’s technical requirements because” the agency found its proposed indirect rate unrealistic). Nothing prohibits an agency from deciding that an offeror’s technical approach merits a positive rating, while also making cost adjustments as part of its cost realism assessment. Innovative Test Asset Sols., LLC, supra, at 9; see, e.g., Smartronix, Inc., B-413721.2, Feb. 22, 2017, 2017 CPD ¶ 59 at 7 (“[W]e see nothing inappropriate or inconsistent with the agency concluding that [the protester’s] technical approach met the minimum standards for acceptability, and, at the same time, taking issue with the aspects of the firm’s staffing approach as part of its cost realism assessment”); see also Oak Grove Techs., LLC, B-415772, B-415772.2, Mar. 15, 2018, 2018 CPD ¶ 127 at 10 (denying protester’s argument that “the elimination of the technical weakness should have precluded any cost realism adjustment”). In this respect, the RFP explicitly provided for MPC adjustments and described the down-select process and CRA steps in detail. For this same reason, BTAS’s assertion that the agency treated BTAS disparately by purportedly ignoring Oasis’ “technical deficiency” also has no merit. See id.; BTAS Comments at 16-17; Supp. Comments at 15-19.

Furthermore, the record does not support BTAS’s assertion that the agency simply accepted offerors’ proposed fringe rates at face value. In fact, this assertion is belied by CPET’s extensive consideration of the fringe rate proposed by one of BTAS’s own subcontractors. The evaluation record shows the CPET found that, while the subcontractor proposed direct labor rates that were lower than the GCE benchmark rates, the subcontractor’s high fringe rate reflected generous fringe benefits. See AR, Tab 91, BTAS Cost Eval., at 11-12. In this respect, the record shows the agency considered the subcontractor’s retirement contributions, stock ownership plan, family health benefits, and leave time for employees, as well as the tenure of the subcontractor’s employees, which the CPET found was almost double the Bureau of Labor Statistic’s median tenure rate for such employees. Id. Moreover, while BTAS objects to the agency’s fringe analysis, the record indicates that BTAS’s and Oasis’ evaluated fringe benefit rates were consistent with [DELETED]. See AR, Tab 87, Rate Analysis, at 1; Tab 91, BTAS Cost Eval., at 13; Tab 128, Oasis Cost Eval., at 13; Tab 22, BTAS Cost Proposal, at 18-19 (discussing its incumbent indirect rates).

We also find meritless BTAS’s arguments that the agency was required to conduct discussions with both BTAS and Oasis. BTAS Protest at 37-38; Supp. Comments at 11-17. At issue here, the RFP stated that “[i]f two or more technically acceptable proposals are not received or if ALL technically acceptable proposals require discussions in cost/price, the Government reserves the right to open discussions with offerors determined to be in the Competitive Range.” RFP Eval. Criteria § 1.2, at 2 (emphasis in original). According to BTAS’s logic, this provision required the Air Force to hold discussions, insofar as the agency found that any of the technically acceptable proposals were unrealistic. See BTAS Comments at 11-15. Again, this argument is based on the faulty premise that finding an offeror’s cost unrealistic, necessarily means the offeror’s technical proposal is unacceptable.

Finally, we find no merit to BTAS's claim that the Air Force was required to hold discussions--or that the agency improperly failed to "void" its earlier competitive range determination--as part of its proposed corrective action. Because a contracting officer's discretion in deciding not to hold discussions is quite broad, and there is no requirement that an agency document its decision not to initiate discussions, we generally will not review an agency's decision not to hold discussions. See, e.g., Coastal Def., Inc., B-413890, Dec. 19, 2016, 2016 CPD ¶ 371 at 6. Here, we find no basis to question the agency's decision not to reestablish a competitive range or conduct discussions with Oasis regarding its indirect rate, but simply to accept the upward rate adjustment the agency made during the pre-corrective action cost evaluation. We also note that although the Air Force initially determined (not unreasonably, in our view) to hold discussions with Oasis regarding its proposed indirect rate prior to taking corrective action, the agency also had the discretion, in our view, to upwardly adjust that rate without holding discussions. In this respect, BTAS is incorrect that the "agency's reliance on the pre-corrective action discussions is a violation of the RFP and FAR requirements that the agency not conduct discussions with one offeror only."²⁰ 2nd Supp. Comments at 2.

In short, ITC's and BTAS's protests of the Air Force's cost evaluations reflect nothing more than the protesters' disagreement with the agency's evaluation judgments, which provides no basis to sustain their protests. See Oasis Sys., LLC; Quantech Servs., Inc., B-408227.10 et al., Apr. 28, 2016, 2016 CPD ¶ 124 at 5-14.

The protests are denied.

Thomas H. Armstrong
General Counsel

²⁰ Contrary to BTAS's mistaken belief, there is nothing inherently improper in a competitive range of one where the agency has a reasonable basis for its competitive range determination. See, e.g., Straughan Envtl., Inc., B-411650 et al., Sept. 18, 2015, 2015 CPD ¶ 287 at 13.