

B-416145.7

March 2, 2021

The Honorable Ryan T. Holte
Judge, U.S. Court of Federal ClaimsRe: *Logistics Health, Inc. v. U.S.*, Case No. 21-759C

Dear Judge Holte:

This letter is in response to your request for an advisory opinion with regard to the above-captioned bid protest case currently before the Court. Specifically, the Court requested our Office's views on an earlier bid protest filed, and subsequently withdrawn, by Logistics Health, Inc. (LHI) with our Office. The views discussed below are based on the records presented to our Office in connection with LHI's earlier protest before our Office.

LHI, of LaCrosse, Wisconsin, protested the award of a contract to QTC Medical Services, Inc., of San Dimas, California, under request for proposals (RFP) No. W15QKN-18-R-1000, issued by the Department of the Army, Army Materiel Command, for contractor operation of the Defense Health Agency's Reserve Health Readiness Program (RHRP). The protester challenged multiple aspects of the agency's technical, past performance and price evaluations; argued that the agency engaged in unequal discussions; and contended that the agency made an unreasonable best-value tradeoff source selection decision.

Based on our review, we would not have objected to the agency's conduct of discussions because they were not unequal in nature. We also would not have objected to the agency's evaluation of proposals or its source selection as they complied with the solicitation, were reasonable, and adequately documented.

BACKGROUND

On November 22, 2017, the agency issued the solicitation as a commercial item acquisition, utilizing the procedures of Federal Acquisition Regulation (FAR) parts 12 and 15, seeking proposals for contractor operation of the RHRP. Agency Report (AR), Tab 13, RFP at 1. The RHRP provides health readiness services to Department of Defense (DOD) active duty military, reserve military, and civilian personnel to ensure they are medically ready to be mobilized to meet the military's various mission needs. AR, Tab 3, Combined Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 1. The types of medical services provided through the RHRP include, among other things, immunizations, physical examinations, pre-deployment health

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assessments, post-deployment health reassessments, mental health assessments, dental examinations and treatments, laboratory services, occupational health services, periodic health assessments, and separation history and physical examinations. AR, Tab 70, RFP amend. 6, attach. 1, Performance Work Statement (PWS) at 1. The contract operator of the RHRP will be required to provide medical services to DOD personnel throughout the United States, its territories, the District of Columbia, and in Germany. *Id.*; RFP at 4.

The solicitation sought to establish a single-award indefinite-delivery, indefinite-quantity (IDIQ) contract with a 1-year base period and four 1-year option periods, under which the agency would issue task orders with both fixed-price and cost-reimbursement elements. RFP at 4-5. The solicitation provided that the potential 5-year term of the contract would have a guaranteed minimum value of \$9 million and a maximum possible value of \$999 million. *Id.* at 4.

The solicitation provided that the agency would make award using a best-value tradeoff methodology, considering price and three non-price evaluation factors. RFP at 5. The solicitation further provided that the three non-price evaluation factors combined were significantly more important than price, and listed the evaluation factors in the following order of individual importance: (1) technical; (2) past performance; (3) price; and (4) small business participation. AR, Tab 73, RFP amend. 6, attach. 6, Basis of Award at 1.¹ Under the technical evaluation factor, the solicitation established three subfactors, listed in descending order of importance: (subfactor 1) technical scenarios; (subfactor 2) management/staffing; and (subfactor 3) transition/quality assurance. *Id.*

Prior to the time set for receipt of proposals, LHI, the incumbent on the current RHRP contract, filed a protest with our Office challenging the terms of the solicitation.² AR, Tab 174, Source Selection Decision Document (SSDD) at 2.³ The agency took corrective action in response to LHI's first protest, resulting in dismissal by our Office. *Logistics Health, Inc.*, B-416145, Apr. 13, 2018 (unpublished decision). Following amendment of the solicitation to implement corrective action, the agency received three proposals--including those from LHI and QTC. AR, Tab 69, RFP amend. 6 at 2; Tab 174, SSDD at 2.

The agency established a competitive range that included all three offerors, conducted discussions, and made award to QTC. AR, Tab 69, RFP amend. 6 at 2; Tab 174,

¹ In responding to the protest, the agency produced multiple versions of Tab 73. The citations in our decision are to the latest-produced version of Tab 73 filed at Electronic Protest Docketing System (Dkt.) No. 44.

² One other offeror also challenged the terms of the solicitation in an agency-level protest filing. COS/MOL at 13.

³ In responding to the protest, the agency produced multiple versions of Tab 174. The citations in our decision are to the latest-produced version of Tab 174 filed at Dkt. No. 44.

SSDD at 7; COS/MOL at 14-15. Following a debriefing, LHI protested the award decision to our Office. COS/MOL at 15. The protester requested alternative dispute resolution (ADR), and the attorney assigned to LHI's second protest conducted outcome prediction ADR, during which she advised the parties that the protest likely would be sustained. *Logistics Health, Inc.*, B-416145.2 *et al.*, July 8, 2020, at 1 (unpublished decision). Following ADR, the agency advised our Office of its intent to take corrective action, in response to which we dismissed LHI's second protest. *Id.* at 2.

As part of its corrective action following LHI's second protest, the agency conducted limited reevaluations, re-opened discussions with QTC, and received (and evaluated) a revised proposal from QTC. AR, Tab 174, SSDD at 8. Based on initial evaluations and the limited reevaluations during the corrective action, LHI's and QTC's proposals received the following ratings:⁴

	LHI	QTC
Technical	Good	Good
Technical Scenarios	Good	Good
Staffing and Management	Acceptable	Acceptable
Transition/Quality Assurance	Outstanding	Good
Past Performance	Substantial Confidence	Satisfactory Confidence
Small Business	Acceptable	Outstanding
Price	\$899,979,399	\$848,582,938

Id. at 8, 10-11. Based on a review of proposals and the evaluation record, the source selection authority (SSA) concluded that LHI's proposal lacked sufficient additional merit to justify payment of a six percent price premium of approximately \$51 million. *Id.*

⁴ As relevant here, the solicitation provided the following definitions for the adjectival ratings of acceptable, good, and outstanding under the technical evaluation factor. An acceptable proposal was one that met the RFP requirements, indicated an adequate approach and understanding of the requirements, and had a "no worse than moderate" risk of unsuccessful performance. AR, Tab 73, RFP amend. 6, attach. 6, Basis of Award at 4. A good proposal was one that indicated a thorough approach and understanding of the requirements, had at least one strength, and a "low to moderate" risk of unsuccessful performance. *Id.* An outstanding proposal was one that indicated an exceptional approach and understanding of the requirements, contained multiple strengths, and had a low risk of unsuccessful performance. *Id.*

Additionally, the solicitation provided the following definitions for the ratings of satisfactory and substantial confidence under the past performance evaluation factor. A rating of satisfactory confidence indicated that the agency had a "reasonable expectation" the offeror would perform successfully. AR, Tab 73, RFP amend. 6, attach. 6, Basis of Award at 7. A rating of substantial confidence indicated the agency had a "high expectation" the offeror would perform successfully. *Id.* at 6.

at 14-15. The SSA again selected QTC for award, concluding that QTC's proposal offered the best value to the government. *Id.* Following a debriefing, LHI filed its third protest with our Office.

Prior to the due date for our Office's decision addressing LHI's third protest, the protester requested and our Office provided outcome prediction ADR. During ADR, the attorney assigned to the protest advised the parties that the protest likely would be denied. Following the ADR, LHI withdrew its protest, and we closed our file without further action. LHI subsequently filed a protest with the United States Court of Federal Claims, and the Court requested our views regarding the merits of the protest LHI filed with our Office. See Request for Advisory Opinion, Jan. 26, 2021, *citing Logistics Health, Inc. v. United States, Inc.*, No. 21-759C, Scheduling Order, Jan. 26, 2021, at 2.

DISCUSSION

The protester asserted that the agency conducted discussions unequally. The protester also challenged the agency's evaluation under the technical factor, first contending that the agency evaluated proposals in a manner that was inconsistent with the solicitation. The protester further argued that the agency made specific evaluation errors under the technical factor, resulting in LHI's proposal not being assessed multiple additional strengths and in QTC's proposal not being downgraded. Similarly, the protester challenged the agency's evaluation under the past performance factor, first contesting the agency's manner of evaluation as mechanical. The protester then argued that the agency improperly credited QTC with the past performance experience of a subcontractor. Additionally, the protester challenged the agency's price evaluation, maintaining that QTC proposed unbalanced prices that create an unacceptable risk for the agency. Finally, the protester challenged the agency's best-value tradeoff analysis, arguing that it was based on a flawed evaluation and that the price savings attributed to QTC's proposal were illusory. For the reasons discussed below, we would not have objected to the agency's conduct of discussions, its evaluation of proposals, or its source selection decision.⁵

Conduct of Discussions

⁵ The protester also initially challenged the agency's evaluation of the awardee's proposed program manager, arguing that the individual the protester assumed the awardee proposed failed to meet the solicitation's minimum requirements. Protest at 13-17. In its report to our Office responding to the protest, the agency specifically responded to this argument, explaining that the awardee did not propose the individual the protester assumed had been proposed, and that the individual the awardee did propose met the minimum requirements for the program manager position. COS/MOL at 17-18, 27-31; AR, Tab 4, Decl. of Technical Factor Chair at 2-4. In its comments on the agency report, the protester failed to rebut or otherwise address the agency's response. See Comments. Accordingly, we would have considered this argument to be abandoned and would not have addressed it. *Quantech Servs., Inc.*, B-417347, B-417347.2, May 29, 2019, 2019 CPD ¶ 203 at 6.

The protester challenged both the agency's conduct of initial discussions as well as the conduct of reopened discussions during corrective action. Protest at 26-30. With respect to initial discussions, the protester contended that the agency provided QTC with two more rounds of discussions and two more opportunities to submit proposal revisions than were provided to LHI during the original evaluation and source selection process. *Id.* at 26-27. The protester maintained that, had it been given the same opportunities and guidance as QTC, the firm "likely would have lowered its price significantly and improved its proposal in other ways, thereby giving it a substantial chance of award." *Id.* at 30. The agency responded that it permissibly tailored discussions to each offeror, and that it appropriately concluded discussions with LHI once the firm resolved all of the weaknesses and deficiencies assessed in its proposal. COS/MOL at 22, 36. As set forth below, we would not have objected to the agency's conduct of discussions.

When an agency elects to conduct discussions with offerors, those discussions must be meaningful, equitable, and not misleading. *Front Line Apparel Group*, B-295989, June 1, 2005, 2005 CPD ¶ 116 at 3. Our Office has found that there is nothing inherently improper in an agency conducting additional discussions relating to previously discussed issues with only one or a limited number of offerors where the agency has remaining concerns relating to those issues. *Id.*; *Universal Protection Serv., LP d/b/a Allied Universal Security Servs.*, B-417376.2, B-417376.3, June 20, 2019, 2019 CPD ¶ 229 at 6. Agencies, however, may not engage in what amounts to disparate treatment of competing offerors. See e.g., *Front Line Apparel Group*, *supra* at 3-4 (sustaining protest where agency afforded some offerors in the competitive range additional discussions in areas that previously were discussed and remained unresolved, but did not afford additional discussions to other offers for whom previously discussed items also remained unresolved). Thus, when an agency conducts multiple rounds of discussions relating to the same issues with one offeror, it must afford other similarly-situated offerors the same benefit of additional discussions. *Id.*; *Martin Elec., Inc.*, B-290846.3, B-290846.4, Dec. 23, 2002, 2003 CPD ¶ 6 at 8-9.

The record before our Office reflected that the agency notified LHI of multiple weaknesses and deficiencies assessed in its initial proposal, and afforded LHI an opportunity to submit proposal revisions. AR, Tab 96b, LHI Initial Evaluation Notice.⁶ Following LHI's submission of a first set of proposal revisions, the evaluators continued to assess as unresolved a single previously discussed deficiency in LHI's proposal, of which the agency advised LHI in a second round of discussions. AR, Tab 100b, LHI Interim Evaluation Notice at 1 (identifying "Finding No. PPLHI-0006" as a "Follow-On" deficiency from a previously sent evaluation notice); see also AR, Tab 96b, LHI Initial Evaluation Notice at 21 (identifying "Finding No. PPLHI-0006" as a deficiency);

⁶ Due to technical difficulties with opening some of the documents provided by the agency in its report responding to the protest, the agency provided corrected, or "b" versions, of some of the documents. The citations in our decision--to all but one "b" version--are to the documents filed at Dkt. No. 52.

Tab 174, SSDD at 15-16 (indicating LHI submitted proposal revisions on March 8, 2019 resulting in an interim evaluation of the same date).

The agency then afforded LHI an opportunity to submit a second set of proposal revisions, following which the evaluators considered all of the weaknesses and deficiencies assessed in the firm's proposal to have been resolved. AR, Tab 108b, LHI Interim Overall Technical Evaluation Report at 9, 11; see *also* Tab 174, SSDD at 15-16 (indicating LHI submitted proposal revisions from June 17 to 27, 2019, resulting in two interim evaluations dated June 17 and 27).

With respect to QTC, the record before our Office reflected that the agency also notified the firm of multiple weaknesses and deficiencies assessed in its initial proposal, and afforded QTC an opportunity to submit proposal revisions. AR, Tab 167, QTC Initial Evaluation Notice. Following QTC's submission of a first set of proposal revisions, the evaluators continued to assess as unresolved a single previously discussed weakness or deficiency in QTC's proposal, of which the agency advised QTC in a second round of discussions. AR, Tab 168, QTC Interim Evaluation Notice at 1-2 (identifying the remaining discussion item as being a "Follow-On" issue from a previously sent evaluation notice); see *also* Tab 174, SSDD at 15-16 (indicating that QTC submitted proposal revisions on February 26 and March 8, 2019 resulting in interim evaluations of the same dates).

The agency then afforded QTC an opportunity to submit a second set of proposal revisions, following which the evaluators still considered the issue unresolved, and the agency advised QTC of this in a third round of discussions. AR, Tab 169, QTC Follow-On Evaluation Notice at 1 (identifying the remaining discussion item as being a "Follow-On" issue from a previously sent evaluation notice); see *also* Tab 174, SSDD at 15-16 (indicating that QTC submitted proposal revisions on June 11 and July 3, 2019 resulting in interim evaluations of the same dates). In response to this follow-on evaluation notice, QTC submitted additional proposal revisions. See AR, Tab 174, SSDD at 15-16 (indicating QTC submitted proposal revisions on August 7, 2019, resulting in an interim evaluation also dated August 7).

There is nothing legally objectionable in an agency's conducting multiple rounds of discussions to resolve weaknesses or deficiencies in a proposal. *General Dynamics-Ordnance & Tactical Systems*, B-401658, B-401658.2, Oct. 26, 2009, 2009 CPD ¶ 217 at 7. As detailed above, the record before our Office showed that, after two rounds of discussions, a previously discussed issue remained in QTC's proposal, warranting a third round of discussions.⁷ In contrast, there were no weaknesses or deficiencies remaining in LHI's proposal, and, thus, there was no need to present LHI with further discussion questions. Moreover, LHI was not deprived of the opportunity to make

⁷ We note that while agencies may choose to, they are not required to afford offerors multiple rounds of discussions in areas that have been the subject of prior discussions but remain unresolved. *Front Line Apparel Group, supra* at 4; *Portfolio Disposition Mgmt. Group, LLC*, B-293105.7, Nov. 12, 2004, 2004 CPD ¶ 232 at 2.

further revisions to its proposal; as all offerors in the competitive range, including LHI and QTC, were provided an opportunity to submit final proposal revisions after discussions were concluded. See AR, Tab 115b, Email from Agency to LHI, Oct. 24, 2019 (requesting final proposal revisions); Tab 170, Letter from Agency to QTC, Oct. 24, 2019 (requesting final proposal revisions); Tab 174 SSDD at 15-16 (indicating that both LHI and QTC submitted final proposal revisions in November 2019).

Further, we would not have found support for the protester's argument that had it been provided additional opportunities to revise its proposal it would have lowered its price, and, thus, been better positioned to receive award. To the contrary, the record before our Office reflected that, over the course of LHI's three sets of proposal revision submissions, the firm increased, rather than decreased, its price. See AR, Tab 87b, LHI Initial Price-Cost Proposal at 7 (total proposed price for all performance periods \$[DELETED]); Tab 120, LHI Final Price-Cost Proposal at 7 (total proposed price for all performance periods \$899,979,399.09).

In addition to challenging the agency's conduct of initial discussions, the protester also argued that the agency engaged in further unequal discussions during its implementation of corrective action following LHI's second protest. As noted above, the attorney assigned to handle LHI's second protest challenging the agency's initial award to QTC conducted outcome prediction ADR. During ADR, the GAO attorney assigned to the protest advised the parties that LHI's second protest likely would be sustained on the basis of LHI's challenge to the agency's evaluation of QTC's proposed program manager. *Logistics Health, Inc.*, B-416145.2 *et al.*, July 8, 2020, at 1 (unpublished decision). In its second protest, LHI argued that QTC's proposed program manager did not meet the solicitation's minimum experience requirements. AR, Tab 5, Protest B-416145.2 at 44. Following ADR, the agency notified our Office of its intent to cancel the awarded contract, reevaluate portions of LHI's and QTC's proposals related to the qualifications of the firms' proposed program managers, possibly reopen discussions, and make a new award decision. *Logistics Health, Inc.*, B-416145.2 *et al.*, July 8, 2020, at 1 (unpublished decision), *citing* AR, Tab 11, Notice of Corrective Action at 1.

In negotiated procurements, contracting officers have broad discretion to take corrective action when the agency determines that such action is necessary to ensure a fair and impartial competition, and, generally the details of a corrective action are within the sound discretion and judgment of the contracting agency. *Environmental Chemical Corp.*, B-416166.3 *et al.*, June 12, 2019, 2019 CPD ¶ 217 at 20. An agency's discretion when taking corrective action extends to the scope of proposal revisions. *Id.*; *Deloitte Consulting, LLP*, B-412125.6, Nov. 28, 2016, 2016 CPD ¶ 355 at 6. When the corrective action does not involve amending the solicitation, we will not question an agency's decision to restrict proposal revisions when taking corrective action so long as the corrective action, including such restrictions, is reasonable in nature and remedies the established or suspected procurement impropriety. *Id.*; *see also*, *Peraton, Inc.*, B-416916.5, B-416916.7, Apr. 13, 2020, 2020 CPD ¶ 144 at 8 (noting that when reopening discussions to address a fault in a proposal the agency improperly failed to

raise in discussions, an agency may reasonably limit the scope of discussions, and even reopen discussions with only the affected offeror).

LHI did not protest the scope of the agency's corrective action at the time it was proposed, nor did it challenge, in its protest docketed at our Office as B-416145.6, the limited scope of reevaluations undertaken by the agency. Rather, LHI argued that the agency unequally reopened discussions with and requested a revised proposal from only QTC. Protest at 29-30. The agency responded that its limited reevaluation of proposals during corrective action resulted in the assessment of a deficiency in QTC's proposal, about which the agency was obligated to notify QTC and provide the firm an opportunity to address. COS/MOL at 22, 37-38. The limited reevaluation of LHI's proposal, however, did not result in the assessment of any new deficiencies or weaknesses, nor did any such deficiencies or weaknesses remain in LHI's proposal following the pre-corrective action rounds of discussion. *Id.* Thus, the agency maintained, there was neither a need, nor an obligation, for it to reopen discussions with LHI. *Id.*

While LHI correctly pointed out that reopening discussions with one firm generally triggers an obligation to reopen discussions with all offerors in the competitive range, under the unique circumstances presented in LHI's protest before our Office, we would not have objected to the agency's limited scope of discussions with, and receipt of similarly limited proposal revisions from, only QTC. In this regard, the record before our Office reflected that the agency's reopened discussions with QTC consisted only of the one previously unidentified deficiency related to QTC's proposed program manager's insufficient years of experience; QTC's proposal revisions similarly were limited to addressing only this deficiency. AR, Tab 171, QTC Corrective Action Evaluation Notice; Tab 172, QTC Response to Corrective Action Evaluation Notice.

The limited discussions and proposal revisions reflected in the record did not afford QTC any unfair competitive advantage over other offerors included in the competitive range. Rather, they only placed QTC in the same competitive position as the other offerors, including LHI, following their receipt of discussions that identified all those firms' proposal deficiencies. *See e.g., Environmental Chemical Corp., supra* at 21 (finding reasonable an agency's proposed corrective action to reopen discussions with only one offeror to address the one deficiency that was not disclosed to the offeror during previous discussions). Based on the record before our Office, we would not have found any basis to sustain the protester's challenges to the agency's conduct of discussions.

General Challenge to the Technical Factor Evaluation

The protester contended that the agency's manner of evaluation resulted in a "systemic failure to evaluate the offerors against all requirements, and to document the results of that evaluation." Protest at 22. The protester argued that the solicitation required the agency to evaluate proposals against each individual PWS requirement, and that the

agency failed to do so. *Id.* at 23-24. The agency responded that the solicitation established technical scenarios to which offerors were required to respond, and explained that the agency would evaluate proposals based on those responses. COS/MOL at 20-21. For its part, the intervenor maintained that the protester's argument was an untimely challenge to the solicitation's terms. Intervenor's Comments at 11. For the reasons set forth below, we would have dismissed this argument as untimely.

Here, the solicitation provided, in relevant part, that the agency's "overarching evaluation approach" under the technical factor would include assessing "[t]he extent to which the proposal demonstrates a clear and complete understanding of the requirements in the [PWS]," and "the extent to which the Offeror is expected to be able to successfully complete the services to meet the requirements of the PWS." AR, Tab 73, RFP amend. 6, attach. 6, Basis of Award at 3.

The protester contended that the solicitation's repeated references to "the requirements in" and "the requirements of" the PWS obligated the agency to evaluate proposals against each individual PWS requirement. Protest at 23. The protester argued that the agency's evaluation ignored parts of the PWS, for example the evaluation did not mention any of the requirements in section 2 of the PWS. *Id.* at 24. The protester maintained that the agency's failure to evaluate each individual PWS requirement resulted in the agency failing to assess multiple additional strengths in LHI's proposal under the technical factor. *Id.* at 25-26.

The agency maintained that the solicitation did not state that the agency would, or that the solicitation obligated the agency to, evaluate proposals against "every single paragraph in the PWS." COS/MOL at 20. Rather, the solicitation established technical scenarios as a technical evaluation subfactor, through which the agency would be able to evaluate offerors' understanding of, and approach to, the PWS requirements. *Id.* at 20-21; see *also* AR, Tab 74, RFP amend. 6, attach. 7, Technical Scenarios.

When a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with such a reading. *Millennium Corp., Inc.*, B-416485.2, Oct. 1, 2018, 2018 CPD ¶ 329 at 5. We would have found unreasonable the interpretation of the solicitation advanced by LHI because it failed to take into account all of the requirements of the solicitation. Specifically, LHI's interpretation failed to take into account the solicitation's establishment of technical scenarios as the method by which the agency would evaluate offerors' approaches to performing the PWS requirements. Further, we would have found overly-expansive LHI's reading of the phrases "the requirements in the PWS" and "the requirements of the PWS" to mean that the agency would evaluate individually each and every PWS requirement.

Moreover, to the extent LHI believed the solicitation's overarching approach language obligated the agency to evaluate in a manner that was inconsistent with the solicitation's

establishment of technical scenarios, such inconsistency was apparent from the face of the solicitation, creating a patent ambiguity. A patent ambiguity exists where the solicitation contains an obvious or glaring error. *RELI Group, Inc.*, B-412380, Jan. 28, 2016, 2016 CPD ¶ 51 at 6. When a patent ambiguity exists in a solicitation, an offeror has an affirmative obligation to seek clarification prior to the first due date for submission of proposals following introduction of the ambiguity into the solicitation. 4 C.F.R. § 21.2(a)(1); *Government Acquisitions, Inc.*; *PCi Tec, Inc.*, B-407877.2 *et al.*, Mar. 25, 2013, 2013 CPD ¶ 82 at 5; *U.S. Facilities, Inc.*, B-293029, B-293029.2, Jan. 16, 2004, 2004 CPD ¶ 17 at 10.

The purpose of our timeliness rule in this regard is to afford the parties an opportunity to resolve ambiguities prior to the submission of offers, so that patently ambiguous provisions can be remedied before offerors formulate their proposals. *Pitney Bowes, Inc.*, B-294868, B-294868.2, Jan. 4, 2005, 2005 CPD ¶ 10 at 5; *U.S. Facilities, supra*. Where a patent ambiguity is not challenged prior to submission of offers, we will dismiss as untimely any subsequent protest assertion that is based on one of the alternative interpretations. See *Pitney Bowes, supra*. Accordingly, we would have viewed LHI's allegation as raising a patent ambiguity in the terms of the solicitation that the firm was required to raise prior to the closing date for receipt of initial proposals. As the protester failed to raise this allegation prior to the closing date, we would have dismissed as untimely LHI's argument that the agency evaluated in a manner inconsistent with the solicitation.

Specific Challenges to the Technical Factor Evaluation

In addition to arguing that the agency's manner of evaluation resulted in multiple strengths not being assessed in the protester's proposal, LHI specifically challenged the agency's failure to assess a strength for the firm's proposed use of [DELETED]-i.e., [DELETED] units. Protest at 20-22. The protester contended that its proposal was not assessed a strength for these [DELETED] units because the agency misunderstood information in the firm's proposal. *Id.* at 20-21. The protester further argued that had its proposal been assessed this additional strength it would have received award because its proposal and QTC's proposal would no longer have been considered "essentially equal." *Id.* at 22. The agency responded that it did not misunderstand LHI's proposal, rather it did not consider the firm's offer to provide [DELETED] as a secondary alternative, rather than all the time, to merit the assessment of a strength. AR, Tab 4, Decl. of Technical Factor Chair at 6-7.

For the reasons set forth below, we would not have objected to the agency's evaluation. It is well-established that in reviewing challenges to an agency's evaluation, we do not reevaluate proposals, but rather, review the agency's evaluation to ensure that it was reasonable, consistent with the terms of the solicitation, and consistent with applicable statutes and regulations. *Synaptex Corp.*, B-410898.6, Feb. 29, 2016, 2016 CPD ¶ 78

at 9. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. *Id.*; *Smiths Detection, Inc.; American Science and Eng'g, Inc.*, B-402168.4 *et al.*, Feb. 9, 2011, 2011 CPD ¶ 39 at 6-7.

Here, the solicitation required the successful offeror to provide an array of medical services, including auditory testing conducted "within a test environment conforming to [DOD] requirements." AR, Tab 70, RFP amend. 6, attach. 6, PWS at 24-25. The solicitation required the provision of medical services, including auditory testing, in not only the clinical facilities of the offeror's provider network, but also in the setting of group events. *Id.* at 1. Group events are gatherings of service members for the provision of face-to-face medical services, typically occurring over a weekend, but potentially lasting up to 31 days at a single location. *Id.* Group events sometimes occur at government-provided sites, such as armories or drill halls. *Id.* The solicitation required the successful offeror to provide all materials, labor, and equipment necessary to provide medical services at group events. *Id.* at 2.

The agency also noted that the required group events can be noisy affairs, presenting challenges to the provision of accurate auditory testing. See AR, Tab 174, SSDD at 9. In recognition of this, one of the technical scenarios established in the solicitation required offerors to address how they would provide auditory testing services for a group event at a location with ambient noise. AR, Tab 72, RFP amend. 6, attach 5, Proposal Submission Instructions at 4.⁸

LHI proposed approaching such an ambient noise situation first by confirming that the space where the group event would take place would have available a [DELETED] in which to conduct auditory testing. AR, Tab 116, LHI Final Proposal for Technical Subfactor 1 at 72. Second, prior to the group event, LHI would use a [DELETED] to assess if the [DELETED] was suitable for conducting auditory testing, and if it was not, LHI would work with the space provider to look for another space. *Id.* Alternatively, if, in its initial inquiry to the group event space, LHI discovered that [DELETED] would be available, LHI committed to offering [DELETED] units in which to conduct auditory testing "in a [DELETED]." *Id.*

The protester argued that the agency misunderstood its proposal, and wrongly concluded that the firm would offer [DELETED] "only when available." Protest at 21. The protester contended that had the agency properly understood that the firm would provide [DELETED] in every instance when LHI learned that no [DELETED] would be available in a group event space, the firm's proposal would, and should, have been assessed a strength. *Id.* at 21-22. The record before our Office did not support the protester's argument that the agency misunderstood the firm's proposal. Rather, the record reflected that the evaluators noted that LHI's equipment capabilities included "[DELETED] units." AR, Tab 128, LHI Final Evaluation for Technical Subfactor 1 at 4.

⁸ In responding to the protest, the agency produced multiple versions of Tab 72. The citations in our decision are to the latest-produced version of Tab 72 filed at Dkt. No. 44.

The evaluators also noted that, through discussions and proposal revisions, LHI resolved a deficiency assessed in the firm's initial proposal for not explaining clearly when [DELETED] would be used. *Id.* at 6; *see also* AR, Tab 96b, LHI Initial Evaluation Notice at 5. Following resolution of the assessed deficiency, the evaluators concluded that LHI's proposal clearly explained the use of [DELETED] and met the requirements of the solicitation. AR, Tab 109b, LHI Interim Evaluation for Technical Subfactor 1 at 6; Tab 128, LHI Final Evaluation for Technical Subfactor 1 at 4.

The solicitation defined a strength as an aspect of a proposal "that has merit or exceeds specified performance or capability requirements in a way that will be advantageous to the Government during contract performance." AR, Tab 73, RFP amend. 6, attach. 6, Basis of Award at 5. The agency explained that it considered LHI's proposal to meet, but not exceed, the solicitation requirements because LHI offered to provide [DELETED] for group events only as a secondary option, rather than as the standard method for delivering auditory testing services in a group event setting.⁹ AR, Tab 4, Decl. of Technical Factor Chair at 6. Contrary to the protester's arguments, the record before our Office reflected that the evaluators understood precisely what LHI had proposed.

The record further reflected how LHI's proposed approach could fail to provide accurate auditory testing during group events. As explained above, LHI's proposed standard method of providing auditory testing at group events was to have the event space include a [DELETED], which the LHI service provider would check for [DELETED] prior to the start of the event, and, if needed, look for alternate space. AR, Tab 116, LHI Final Proposal for Technical Subfactor 1 at 72. In its proposal, LHI acknowledged that this approach might sometimes result in a group event where there would not be a sufficiently [DELETED] to conduct accurate auditory testing. *Id.* at 73. LHI provided that if a customer "request[ed] service despite the environment," the firm would "provide the service," [DELETED], and [DELETED]. *Id.* Based on the record before our Office, we would not have objected to the agency's judgment that LHI's offer to provide [DELETED] as a secondary option for group events did not merit the assessment of a strength. The protester's disagreement with the agency's judgment, without more, would not have provided a basis for our Office to sustain the protest.

In addition to challenging the evaluation of its own proposal under the technical factor, the protester similarly argued that the agency misunderstood QTC's proposal with respect to the size of the firm's proposed provider network, and that, but for this

⁹ The protester argued that the agency's explanation, provided in its report responding to the protest, was a *post-hoc* rationalization to which our Office should accord no weight. Comments at 10. Our decisions consistently have explained that we will not limit our review to contemporaneous evidence, but also will consider post-protest explanations that provide a detailed rationale for contemporaneous conclusions, and simply fill in previously unrecorded details, when those explanations are credible and consistent with the contemporaneous record. *ERC, Inc.*, B-407297, B-407297.2, Nov. 19, 2012, 2012 CPD ¶ 321 at 9. We would have found the agency's explanation both credible and consistent with the contemporaneous record before our Office.

misunderstanding, LHI would have been selected for award. Protest at 17-20. The protester contended that the agency mistakenly credited QTC with proposing a network of [DELETED] providers. *Id.* at 17. The protester maintained that QTC's proposal instead provided that the firm has a commercial network of approximately [DELETED] providers, and that QTC has potential access to an additional [DELETED] providers in a [DELETED]. *Id.* at 18-19. The protester further represented that a firm's commercial network of providers is not necessarily the same as its RHRP network of providers. *Id.* at 17.

The agency responded that QTC's proposal represented that the firm had the resources of each of its team members "at the ready" to support the RHRP contract. AR, Tab 4, Decl. of Technical Factor Chair at 4, *citing* Tab 159b,¹⁰ QTC Final Proposal for Technical Subfactor 1 at 17. The agency further responded that the evaluators did not credit QTC with offering a network of [DELETED] providers, but instead credited the firm with a network potentially in excess of [DELETED] providers. AR, Tab 4, Decl. of Technical Factor Chair at 4. With respect to this second contention, the record before our Office did not support the agency's representation. Rather, the record reflected that the evaluators noted "[t]he QTC team has more than [DELETED] in its network of providers," implying that QTC offered a network with a minimum of [DELETED] providers. AR, Tab 173, QTC Final Evaluation for Technical Subfactor 2 at 3.

The agency may have erred with crediting QTC's proposal as offering as providers committed to the RHRP effort the [DELETED] personnel listed in a [DELETED]. The record before our Office confirmed, however, the agency's explanation that the [DELETED] commercial network providers, which the protester acknowledged QTC has in its commercial provider network, were offered as "at the ready" to support the RHRP contract. AR, Tab 159b, QTC Final Proposal for Technical Subfactor 1 at 17. By comparison, the protester offered a network of approximately [DELETED] providers, the same network with which it performs as the incumbent contractor. Protest at 25. Based on this record, we would not have concluded that the agency's error in crediting QTC with [DELETED] providers, rather than [DELETED], was prejudicial to LHI.

Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was competitively prejudiced by the agency's actions, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. *Med Optical*, B-296231.2, B-296231.3, Sept. 7, 2005, 2005 CPD ¶ 169 at 4. We would have found that even if the agency had credited QTC with only [DELETED] network providers, the evaluators' assessment that the firm proposed a sufficient network would remain, leaving intact the evaluation of offerors' proposals and the best-value tradeoff analysis based on those evaluations.

¹⁰ References in our decision to Tab 159b are to the version produced at Dkt. No. 44.

Past Performance Evaluation

As with the agency's evaluation of proposals under the technical factor, the protester challenged both the agency's manner of evaluating and specific aspects of the evaluation under the past performance factor. The protester maintained that the agency evaluated past performance in a mechanical fashion that unreasonably failed to recognize meaningful differences between offerors. Protest at 30-32. The protester further contended that the agency inappropriately credited QTC with the past performance of one of its subcontractors, and inappropriately credited QTC with experience relevant to periodic health assessments and group events. *Id.* at 32-38. The agency responded that it did take into account differences between offerors when conducting past performance evaluations, and that it reasonably credited QTC with relevant past performance experience in the challenged areas. COS/MOL at 22-24, 38-47. For the reasons set forth below, we would not have objected to the agency's evaluation.

The evaluation of an offeror's past performance is within the discretion of the contracting agency, and we will not substitute our judgment for reasonably based past performance ratings. *Al Raha Group for Tech. Servs., Inc.; Logistics Mgmt. Int'l, Inc.*, B-411015.2, B-411015.3, Apr. 22, 2015, 2015 CPD ¶ 134 at 5. Rather, we will review the evaluation to ensure it was reasonable and consistent with the solicitation and procurement statutes and regulations. *Falcon Env'tl. Servs., Inc.*, B-402670, B-402670.2, July 6, 2010, 2010 CPD ¶ 160 at 7. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that an evaluation was improper. *Chenega Fed. Systems, LLC*, B-417037.2, Sept. 6, 2019, 2019 CPD ¶ 314 at 7.

Here, the solicitation required offerors to identify past performance reference contracts for both the prime and each proposed major subcontractor. AR, Tab 72, RFP amend. 6, attach 5, Proposal Submission Instructions at 6. The solicitation further provided that the agency would evaluate both "the [o]fferor and its major subcontractors on the quality of their relevant and recent past performance." AR, Tab 73, RFP amend. 6, attach. 6, Basis of Award at 5. The solicitation explained that, after checking to ensure an offeror's past performance references were recent, the agency would evaluate the relevance of each effort to the solicitation's requirements, and assess the quality of the performance. *Id.* at 5-6.

The protester first argued that the agency's evaluation of past performance was a mechanical "check-the-box" exercise that failed to recognize the qualitative difference between LHI's very relevant past performance as the incumbent and QTC's less relevant past performance. Protest at 30-32. The record before our Office did not support the protester's argument. Rather, the record reflected that the agency expressly recognized differences in the offerors' past performance. Specifically, the record showed that the evaluators assessed one of QTC's past performance references as not relevant, and assessed the remaining seven as relevant. AR, Tab 153, QTC Final Evaluation for Past Performance at 4.

In contrast, the evaluators assessed one of LHI's past performance references as relevant, and assessed the remaining seven as very relevant. AR, Tab 112, LHI Interim Evaluation for Past Performance at 4.¹¹ The record also showed that the evaluators differentiated between the offerors when it assigned LHI's proposal a rating of substantial confidence, while assigning QTC's proposal a rating of satisfactory confidence. AR, Tab 131, LHI Final Evaluation for Past Performance at 1; Tab 153, QTC Final Evaluation for Past Performance at 1. Further, the SSA acknowledged LHI's superior past performance in the best-value tradeoff analysis, but concluded that LHI's advantages were not worth paying its associated price premium. AR, Tab 174, SSDD at 13-14. Based on the record before our Office we would not have found a basis to sustain the protester's challenge to the agency's method of evaluating past performance.

The protester also purported to challenge three specific aspects of the agency's evaluation of QTC's past performance--the evaluators' crediting QTC for the experience of one of the firm's proposed subcontracts, crediting QTC for experience with periodic health assessments, and crediting QTC for experience with group events. Protest at 32-38. All three of these challenges were premised on the same central argument, however, that the agency improperly credited QTC with the past performance experience of one of its subcontractors, whose references provided the basis for the evaluators to credit QTC for experience with periodic health assessments and group events. *Id.* at 34-35.

The protester contended that the agency improperly credited QTC with work performed by its proposed subcontractor [DELETED]. Protest at 32-33. The protester did not challenge the agency's assessment that the range of clinical services performed by [DELETED] under the two reference contracts are relevant to the RHRP requirement. Rather, the protester maintained that QTC should not have been credited with this relevant work because QTC did not propose [DELETED] to perform any clinical services. *Id.* Instead, LHI contended that QTC proposed [DELETED] to perform only non-clinical administrative support services related to group events. *Id.* at 33.

The agency responded that it properly credited QTC with the relevance of [DELETED]'s references because the protester erred in concluding that QTC did not propose [DELETED] to perform medical services. COS/MOL at 45. Based on the record before our Office, we would not have objected to the agency's assessment. Specifically, in describing the work areas for each company in its team, QTC listed "[g]roup events, including medical services and dental examinations and treatment" for [DELETED] and its affiliates. AR, Tab 158, QTC Interim Past Performance Proposal at 42. In listing its team members' roles and responsibilities, QTC again provided that [DELETED] would be responsible for "[g]roup events with medical and dental services, including dental

¹¹ In responding to the protest, the agency produced multiple versions of Tab 112. The citations in our decision are to the version of Tab 112 filed at Dkt. No. 44.

treatment for all events.” *Id.* The record before our Office belied the factual premise of the protester’s challenges to the agency’s evaluation of QTC’s past performance. Accordingly, we would not have objected to the agency’s evaluation.¹²

Price Evaluation

The protester also contended that the agency failed to evaluate QTC’s proposed prices for balance, and that had it done so it would have discovered that QTC’s proposal contains multiple prices for individual medical procedures (“procedure-level” prices) that

¹² The protester also contended that the two [DELETED] references were too small to be considered relevant compared to the \$999,000,000 maximum possible value of the RHRP contract. Protest at 33-34. While the protester was correct that the two [DELETED] references, valued at \$129,716.32 and \$55,972, represent, respectively, 0.013 and 0.006 percent of the maximum RHRP contract value, the protester’s argument would not have provided a basis to sustain the protest.

As an initial matter, we would have noted that the agency limited offerors to identifying individual task orders if utilizing an IDIQ contract as a reference, rather than the entire IDIQ contract. AR, Tab 72, RFP amend. 6, attach. 5, Proposal Submission Instructions at 6. This limitation reduced the value of several reference contracts identified by both LHI and QTC. For example, even for LHI’s incumbent RHRP contract, for which the maximum value of the total IDIQ is \$998,000,000, the value of the single task order reference identified by LHI was only \$45,800,000--approximately 4.585 percent of the maximum possible contract value at issue here. See AR, Tab 119, LHI Final Past Performance Proposal at 1.

Further, we would have noted that had the agency employed the standard of relevancy advocated by LHI, at least five of LHI’s reference contracts would have been evaluated as not relevant, while only three of QTC’s references would have been considered not relevant. LHI identified eight past performance reference contracts ranging in value from \$781,022 to \$58,000,000, or approximately 0.078 to 5.806 percent of the maximum RHRP contract value. AR, Tab 119, LHI Final Past Performance Proposal at 1, 3-5, 7. Of LHI’s eight identified reference contracts, five had values of less than one percent of the maximum RHRP contract value (0.078, 0.102, 0.18, 0.386, and 0.501 percent). *Id.* at 3-5. QTC also identified eight reference contracts ranging in value from \$55,972 to \$23,090,933,307, or approximately 0.006 to 2,311.405 percent of the maximum RHRP contract value. AR, Tab 153, QTC Final Past Performance Evaluation at 5-7, 9, 11, 13, 15, 18. Only three of QTC’s eight identified reference contracts had values of less than one percent of the maximum RHRP contract value, however (0.006, 0.013, and 0.300 percent). *Id.* at 9, 11, 18. The integrity of the protest process does not permit a protester to espouse one position during the procurement, and then argue during a protest that the position is unreasonable or otherwise improper. See *Navistar Defense, LLC; AM General, LLC, B-407975.2 et al.*, Dec. 19, 2013, 2014 CPD ¶ 287 at 10. Accordingly, we would not have found this argument to provide a basis to sustain the protest.

either are overstated or understated. Protest at 36-37. The protester further argued that this resulted in the agency's failure "to recognize the major risks created by QTC's proposal." *Id.* at 41. The protester argued that if the agency had conducted a proper price evaluation, "it would have realized that QTC should be ineligible for award." *Id.* at 43. In response, the agency contended that it reasonably evaluated QTC's proposed price for balance, and found it to be balanced. COS/MOL at 24-25, 48-50. The agency further argued that, even if QTC's proposed pricing was unbalanced, there was no requirement for the agency to reject QTC's offer on that basis. *Id.* at 49.

The FAR provides that "[a]ll offers with separately priced line items or subline items shall be analyzed to determine if the prices are unbalanced." FAR 15.404-1(g)(2). Unbalanced pricing exists where, despite a proposal's low overall price, individual line items prices are either understated or overstated, as indicated by the application of cost or price analysis techniques. FAR 15.404-1(g); *Gulf Master Gen. Trading, LLC*, B-407941.2, July 15, 2013, 2013 CPD ¶ 210 at 4. While unbalanced pricing may increase risk to the government, agencies are not required to reject an offer solely because it is unbalanced. FAR 15.404-1(g)(1), (3); *Semont Travel, Inc.*, B-291179, Nov. 20, 2002, 2002 CPD ¶ 200 at 3. Our Office will review for reasonableness an agency's determination as to whether an offeror's prices are unbalanced. *Semont Travel, Inc.*, *supra*.

Here, the solicitation established multiple contract line item numbers (CLINs) for each period of performance, including fixed-priced CLINs in each period for procedures and contractor manpower reporting, and cost-reimbursable CLINs for travel, shipping, and other direct costs.¹³ RFP at 7-18. In addition, the solicitation provided a pricing matrix that each offeror was required to use to submit its procedure-level proposed pricing for the hundreds of individual solicited services.¹⁴ AR, Tab 71, RFP amend. 6, attach. 4, Price Matrix, Procedures Worksheet; Tab 72, RFP amend. 6, attach. 5, Proposal Submission Instructions at 9.

The solicitation explained that the agency would calculate each offeror's total evaluated price by adding the firm's proposed fixed prices for procedures, incoming transition, outgoing transition, and contractor manpower reporting, to the firm's proposed reimbursable costs for travel, shipping, and influenza vaccines for each period of performance. AR, Tab 73, RFP amend. 6, attach. 6, Basis of Award at 7. For the individual procedures, the agency would multiply the firm's proposed fixed-price by the

¹³ In the base year and fourth option year periods of performance, the solicitation also included fixed-price CLINs for contractor transition in and out, respectively. RFP at 6, 18

¹⁴ Examples of the types of services for which offerors were required to provide pricing include a separation history and physical exam performed at a group event, a mental health assessment completed through a contractor's call center, an acoustic reflex test performed "in-clinic," an in-clinic extraction of a single tooth, and an offeror's proposed "no-show" fee for immunization at a group event. Tab 71, RFP amend. 6, attach. 4, Price Matrix, Procedures Worksheet at Rows 173, 227, 238, 496, 691.

procedure quantity set forth in the solicitation's pricing matrix. *Id.* The solicitation further provided that the agency would evaluate proposals for unbalanced pricing, and that the agency "may" find a proposal to be unacceptable if it presented materially unbalanced pricing or "may" reject a proposal if it determined that a firm's lack of balanced pricing presented an unacceptable risk to the government. *Id.* at 8.

The record before our Office reflected that the evaluators had concerns with QTC's initially proposed pricing, noting that "amounts for the majority of the procedures presented a [DELETED]," and that the "Based Period fixed unit prices for the procedures appeared [DELETED]." AR, Tab 156, QTC Final Price-Cost Evaluation at 7. The evaluators raised this area of concern with QTC during discussions. *Id.* In response, QTC submitted proposal revisions that elaborated on the firm's initial proposal, explaining that, "as a commitment to the program," the proposed base period pricing was [DELETED]. *Id.*

The evaluators concluded that the [DELETED] was a "major contributor" to the [DELETED] in procedure-level pricing between the [DELETED] and the [DELETED], and did not take further exception to QTC's explanation. *Id.*; COS/MOL at 25. The evaluators also concluded that QTC's proposed pricing between the remaining option periods appeared balanced. AR, Tab 156, QTC Final Price-Cost Evaluation at 7. In performing their price evaluation, the evaluators compared QTC's proposed price to the prices of other offerors and to the independent government cost estimate (IGCE). *Id.* at 7-8. Based on this record, we would not have found a basis to sustain the protester's argument that the agency failed to evaluate for unbalanced pricing.¹⁵

¹⁵ With regard to the protester's contentions that a number of QTC's proposed procedure-level prices were overstated or understated, we would have noted that the protester's own proposal suffered from the same perceived defects. The protester contended that [DELETED] of QTC's proposed procedure-level prices in the base period, and [DELETED] of QTC's prices in the option periods, are more than [DELETED] than both LHI's own proposed prices and the prices in the IGCE. LHI argued that a [DELETED] difference in this regard is "significant," and that this created a risk the agency will pay unreasonably high prices for these procedures. Protest at 38-41, *citing* Protest exh. D, Consultant Decl. The protester also contended that [DELETED] of QTC's procedure-level prices in the base period, and another [DELETED] procedure-level prices in the option periods, were more than [DELETED] than both LHI's own proposed prices and the prices in the IGCE. LHI argued that this created a risk that "QTC will be underwater on the contract and the [agency] will be faced with major performance problems." Protest at 40, 42-43, *citing* Protest exh. D, Consultant Decl.

The intervenor pointed out, however, that LHI's proposed prices were more than [DELETED] than QTC's prices or the IGCE [DELETED] as often as QTC's during the first option period, for example, and that LHI proposed more than [DELETED] procedure-level prices that were more than [DELETED] than QTC's prices or the IGCE.

Best-Value Tradeoff

Finally, the protester argued that the errors in the agency's evaluation of proposals resulted in the agency making a flawed best-value tradeoff. Protest at 44. This allegation was derivative of the protester's challenges to the agency's evaluation of proposals. As discussed above, we would have found no basis to object to the agency's evaluation of proposals. Accordingly, we would have dismissed this allegation because derivative allegations do not establish independent bases of protest. *DirectVizSolutions, LLC*, B-417565.3, B-417565.4, Oct. 25, 2019, 2019 CPD ¶ 372 at 9.

The protester further contended that the agency's best-value tradeoff decision was flawed because it relied on QTC's approximately \$50 million price advantage, which the protester maintained was illusory. Protest at 44. The protester argued that the agency based its price analysis on 12-months of full performance during the contract's base period, but QTC's proposal provided for only a [DELETED]-month period of full performance preceded by an [DELETED]-month transition period during which QTC would not perform any procedures. *Id.* The protester maintained that if the agency had taken this into account, its price analysis would have shown that QTC's proposed price savings during the contract's base period was not \$20 million, but only \$6.7 million, reducing the firm's total price savings from \$50 million to approximately \$36.7 million. *Id.* The protester argued that if the agency had conducted a proper evaluation, it would have recognized that LHI's proposal was technically superior, rather than essentially equal, to QTC's proposal, and that it would have chosen to pay a \$36.7 million price premium for LHI's technical advantages. *Id.* at 44-45. The agency requested that we dismiss this argument as an untimely challenge to the pricing evaluation scheme set forth in the solicitation. COS/MOL at 53 n.4.

Intervenor's Comments at 20. The intervenor also pointed out that while LHI maintained in its protest that multiple procedure-level prices proposed by QTC were "[DELETED]" because they were more than [DELETED] the IGCE, the protester's own proposed prices were more than [DELETED] the IGCE for [DELETED] different procedures, and, thus, were "[DELETED]" by the protester's own logic. *Id.* at 21, *citing* Protest at 38.

We would have agreed with the intervenor that, to the extent QTC's procedure-level pricing may have presented a risk of overpayment or underperformance, the protester failed to explain why those same risks also would not have applied to its own proposal. Accordingly, we would not have found this argument to provide a basis to sustain the protest. See *Raytheon Co.*, B-417524.2, B-417524.3, Dec. 19, 2019, 2020 CPD ¶ 50 at 8 (noting that the integrity of the procurement process did not allow the protester to espouse a position in litigation--with respect to whether completion bonuses should be paid as cost-reimbursable items or as part of fully burdened labor rates--that was different than the position taken by the protester in how it structured its proposal submission).

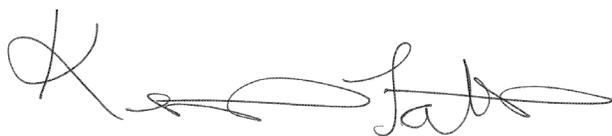
Our Bid Protest Regulations contain strict rules for the timely submission of protests. These rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. *Verizon Wireless*, B-406854, B-406854.2, Sept. 17, 2012, 2012 CPD ¶ 260 at 4. Our timeliness rules specifically require that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial submissions be filed before that time. 4 C.F.R. § 21.2(a)(1); see *AmaTerra Envtl. Inc.*, B-408290.2, Oct. 23, 2013, 2013 CPD ¶ 242 at 3.

The record before our Office showed that the solicitation provided that the base period of performance would consist of a transition period that “may include procedures.” RFP at 4-5. Further, in the pricing matrix, which the solicitation required offerors to use for proposal submissions, the agency provided the same estimated quantities for each individual procedure in the base period of performance as it did in the subsequent option years. AR, Tab 71, RFP amend. 6, attach. 4, Price Matrix, Procedures Worksheet at Column G.

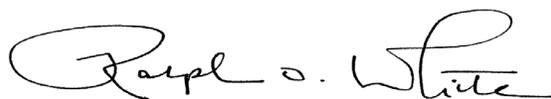
Accordingly, the protester’s argument that the agency improperly evaluated QTC’s proposal based on a full complement of procedure quantities in the base year essentially was a challenge to the solicitation’s pricing scheme establishing the same estimated quantities for procedures in each performance period. We would have found this argument untimely as it was brought after the time set for receipt of proposals. *General Dynamics-Ordnance & Tactical Systems*, *supra* at 6.

In conclusion, we would have denied LHI’s protest had it remained before our Office, and as was predicted during the outcome prediction ADR.

Sincerely yours,



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Ralph O. White
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