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Decision

Matter of: DevTech Systems, Inc.

File: B-416591; B-416591.2

Date: October 24, 2018

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R. Rene Dupuy, Esq., and Rachel B. Cochran, Esq., United States Agency for International Development, for the agency.
Mary G. Curcio, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation of protester's proposal and elimination of that proposal from the competitive range is denied where evaluation was reasonable, performed in accordance with the solicitation, and protester's proposal was not one of the most highly rated.

DECISION

DevTech Systems, Inc., a small business concern of Arlington, Virginia, protests the decision of the United States Agency for International Development (USAID) to eliminate from the competitive range the proposal DevTech submitted in response to request for proposals (RFP) No. SOL-OAA-16-000189, for services in support of the Famine Early Warning Systems Network 7 (FEWS NET 7). DevTech argues that the agency unreasonably evaluated its proposal, and failed to justify its cost realism analysis.

We deny the protest.

BACKGROUND

The solicitation was issued on September 27, 2016, for services to support FEWS NET 7, a USAID system intended to produce evidence based information to drive decision making and help identify responses which will reduce acute and chronic food insecurity. Agency Report (AR), Tab 2, Contracting Officer's Statement (COS), at 1. The solicitation is structured around four pillars of activity, including, as relevant here, Pillar

2-Management of a FEWS NET Learning and Data Hub. Id. Under this pillar, the agency's goals are to: (1) ensure FEWS NET data and information is captured, documented, and made widely accessible for all users through the FEWS NET web-site and other delivery channels, and (2) develop new methods for delivering FEWS NET data, tools, information, knowledge, and learning to both FEWS NET 7 team members and other users, and for uses which may extend beyond FEWS NET's immediate focus on current and chronic food security. AR, Tab 4D, RFP at 35.

The agency intends to award one indefinite-delivery, indefinite-quantity (IDIQ) contract for Pillar 2, which was set aside for small business concerns. Id. at 1. In addition to the IDIQ contract for Pillar 2, the agency was to issue its first cost-plus-fixed-fee task order and included a request for task order proposals (RFTOP) as an attachment to the solicitation. Id. at 187.

The solicitation provided for award on a best-value tradeoff basis considering cost and the following non-cost factors: technical approach; institutional capability, management approach and staffing; and past performance.¹ Id. at 205-206. With respect to cost, the agency advised that offerors responding to Pillar 2 would "be evaluated based on their costs, as proposed in response to the attached RFTOP." Id. at 210. The solicitation advised offerors that in making the best-value tradeoff, non-cost factors were more important than cost, and that the institutional capability, management approach and staffing factor (factor 2) was the most important non-cost factor, followed by the technical factor (factor 1), and then past performance (factor 3). Id. at 205, 211. In addition, the solicitation stated that the contracting officer would determine the competitive range of offerors with whom negotiations would be conducted pursuant to Federal Acquisition Regulation (FAR) § 15.306(c). Id. at 211.

The agency received nine proposals for Pillar 2 by the closing date of November 21, 2016, including one from DevTech, which were evaluated as follows²:

¹ The subfactors for technical approach are: 1.1-demonstrated approach to data management and knowledge sharing for FEWS NET team members; 1.2-demonstrated approach to data management and knowledge sharing for external users (non FEWS NET team members); 1.3-demonstrated approach to managing and improving the FEWS NET website; 1.4-demonstrated approach to managing and improving the FEWS NET Data Warehouse; and 1.5-demonstrated approach to ensuring FEWS NET data and knowledge is consistent with USAID and United States Government data policies and standards. RFP at 205. The subfactors for institutional capability, management approach and staffing are: 2.1-demonstrated institutional experience in developing and managing complex websites and datasets; 2.2-realistic and achievable management plan; and 2.3-staffing. Id. at 205-206. The subfactors for past performance are: 3.1-technical performance; 3.2-cost control; 3.3-schedule; 3.4-management of business relations; 3.5-regulatory compliance; and 3.6-degree of relevance. Id. at 206.

² In evaluating proposals the agency assigned adjectival ratings of exceptional (E), very good (VG), satisfactory (S), marginal (M), or unsatisfactory (U). AR, Tab 7, Technical (continued...)

	Offerors								
	A	B	C	D	DevTech	F	G	H	I
Technical Approach	S	VG	VG	M	M	U	U	U	U
Subfactor 1.1	M	VG	VG	M	U	U	U	U	S
Subfactor 1.2	S	S	E	U	S	M	U	U	M
Subfactor 1.3	S	S	VG	M	M	U	U	U	U
Subfactor 1.4	M	VG	VG	M	U	U	U	U	U
Subfactor 1.5	S	S	S	S	S	U	S	S	U
Institutional Capabilities, Management Approach, and Staffing	S	S	M	M	M	M	M	U	M
Subfactor 2.1	S	VG	VG	S	VG	S	M	M	M
Subfactor 2.2	M	S	S	M	M	M	M	U	M
Subfactor 2.3	E	S	U	U	M	U	U	U	U
Past Performance	S	E	VG	E	VG	E	E	E	VG
Non-Cost Overall	S	VG	S	M	M	M	M	U	M

AR, Tab 11, Competitive Range Memorandum, at 6. With respect to cost, the proposed and most probable costs for those offerors that were rated marginal or better were as follows:³

Offeror	Proposed Cost	Most Probable Cost
Offeror D	\$21,874,132	\$24,441,644
Offeror B	\$28,418,238	\$26,590,938
Offeror G	\$28,233,826	\$27,318,541
Offeror A	\$24,403,398	\$28,465,631
Offeror C	\$24,962,679	\$28,494,951
Offeror I	\$26,753,600	\$29,395,799
Offeror F	\$29,610,541	\$31,448,697
DevTech	\$29,671,721	\$32,715,237

Id. at 8.

The agency included three offerors--A, B, and C--in the competitive range. Id. at 8-12. DevTech's proposal, which was ranked 5 out of 9 for its non-cost proposal and was the

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Evaluation Memorandum (TEM), at 6-7. In the case of past performance, a proposal could also be assigned a rating of neutral where the offeror lacked relevant past performance, or where past performance information was unavailable. Id. at 8.

³ Offeror's H cost proposal was not considered since offeror H was rated unacceptable for the non-cost factors. AR, Tab 11, Competitive Range Memorandum, at 18.

highest in cost of the eight proposals that were rated marginal or better under the non-cost factors, was not included in the competitive range. Id. at 14 15. Following a debriefing, DevTech protested to our Office.

DISCUSSION

DevTech protests that the agency unreasonably evaluated its proposal under the technical approach, international capability, management approach and staffing, and past performance factors. Protest at 20-69; Supp. Protest and Comments, Aug. 27, 2018, at 19-22, 24-58. DevTech also challenges the agency's cost realism analysis. According to DevTech, but for these errors, its proposal would have been included in the competitive range. The agency contends that its evaluation was reasonable.

The competitive range generally consists of the most highly rated proposals, based on evaluation of the information submitted in each proposal against the stated evaluation criteria. FAR § 15.306(c); NCLN20, Inc., B-287692, July 25, 2001, 2001 CPD ¶ 136 at 2. In reviewing protests of competitive range determinations, we will not reevaluate proposals; rather, we will review the record to ensure that the evaluation and competitive range determination were reasonable and consistent with the terms of the solicitation. Id. An offeror's disagreement with the agency's evaluation, without more, is not sufficient to render the evaluation unreasonable. InGenesis, Inc., B-412967.3, B-412967.4, Sept. 26, 2017, 2017 CPD ¶ 336 at 4. Contracting agencies are not required to include a proposal in the competitive range where the proposal is not among the most highly rated. See FAR § 15.306(c)(1).

We find the evaluation here, and the agency's decision to exclude DevTech's proposal from the competitive range, were reasonable. While our decision does not specifically discuss each and every argument, we have reviewed all of DevTech's protest allegations and find none provide a basis to sustain the protest. We discuss several issues below.

Technical Approach

DevTech was rated marginal under the technical approach factor. In evaluating DevTech's proposal, the agency assigned it one strength, two weaknesses and two significant weaknesses under subfactor 1.1-demonstrated approach to data management and knowledge sharing for FEWS NET team members; one strength and two weaknesses under subfactor 1.2-demonstrated approach to data management and knowledge sharing for users other than FEWS NET team members; one strength and one significant weakness under subfactor 1.3-demonstrated approach to managing and improving the FEWS NET website; one deficiency under subfactor 1.4-demonstrated approach to managing and improving the FEWS NET data warehouse; and one strength under subfactor 1.5-demonstrated approach to ensuring FEWS NET data

consistency. AR, Tab 7, TEM, at 58-62. DevTech challenges the assignment of each significant weakness and deficiency.⁴ Protest at 38-69.

We find no basis to question the evaluation of DevTech's proposal under the technical approach factor. We discuss one representative example below.

For subfactor 1.3-demonstrated approach to managing and improving the FEWS NET website, offerors were required to, among other things, establish procedures for uploading new content produced by FEWS NET Team members, and provide an approach to collaboratively managing a process to make small or large improvements to the website over the course of FEWS NET 7 implementation. RFP at 182.

The agency assigned DevTech's proposal a significant weakness under this subfactor because it found that DevTech proposed a "user" focused process for identifying large and small changes to the website, rather than a collaborative approach to managing a team member process for making improvements. AR, Tab 7, TEM, at 61. The agency explains that DevTech did not distinguish between the team members and other users or provide an explicit description of how it planned to include FEWS NET team members in the decision making process for small and large changes to the FEWS NET website. Id. Instead, DevTech grouped team members under the generic term "users" and did not treat their interests as any different from the community at large. Id. Accordingly, the agency concluded that DevTech did not fully understand the potential challenges involved in playing a leading and collaborative role with other team members regarding the website, which is a team wide resource, and effectively co-owned by all team members.⁵ Id.

⁴ In its protest, DevTech also challenged the assignment of the four weaknesses. Protest at 59-69. The agency provided a detailed explanation for the assignment of those weaknesses in its agency report responding to the protest. COS at 32-39. In its comments, DevTech did not substantively rebut the agency's explanations, but merely repeated its bases of protest. Supp. Protest and Comments, Aug. 27, 2018, at 58. Merely referencing or restating a protest basis without substantively responding to an agency's detailed rebuttal amounts to abandonment of the protest bases. Citrus College; KEI Pearson, Inc., B-293543, et al. Apr. 9, 2004, 2004 CPD ¶ 104 at 8 n.4.

⁵ The agency notes that the solicitation specifically defines FEWS NET team members as those parties with a formally defined relationship to the FEWS NET activity, working to achieve some or all of its goals and objectives through specific, mutually agreed upon tasks. RFP at 11. The FEWS NET team members and partners include IDIQ contract holders; those who have been contracted by USAID to implement specific FEWS NET 7 task orders; inter-agency team members under a participating agency service agreement or participating agency personnel agreement funded by USAID, which describes specific tasks and deliverables related to FEWS NET and USAID; and parties without a formal relationship to the USAID FEWS NET activity but who work with FEWS
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We find the evaluation reasonable. First, DevTech asserts that the evaluation was unreasonable because the solicitation anticipated a user-oriented approach to the website. DevTech points to several provisions of the solicitation to support its position that the solicitation is user-focused. For example, DevTech points to the following provision, entitled, Make FEWS NET Food Security-Related Data and Knowledge Products More Accessible for FEWS NET 7 Team Members, which provides:

One of the primary initiatives the Contractor must undertake in Pillar 2 is to manage a process among FEWS NET 7 Team members to identify and build more interactive functions. . . and tools into the FEWS NET 7 website and Data warehouse, in order to promote and facilitate user-specific, self-directed inquiries of these resources and to share FEWS NET data, knowledge and learning broadly.

RFP at 50.

This provision was included in the solicitation in discussing subfactor 1.1, which concerns making FEWS NET security related data and knowledge products more accessible to FEWS net members. Id. In this regard, the solicitation provision further states that the “Pillar 2 Contractor must lead [] a team-wide collaborative process to identify and build new tools, methods and/or approaches to “link” the data and information resources of the FEWS NET 7 website, the website products of FEWS NET [interagency agreement] Team members, . . . and the FEWS NET Data Warehouse.” Id.

Therefore, even if the term “users” is not referring to team members, the task is to manage a process among team members to facilitate user inquiries. In this regard, the fact that the solicitation requires responding to the needs of users does not negate the agency’s position that it was seeking a team wide collaborative approach to improving the website. Accordingly, DevTech has not demonstrated that the agency’s conclusion- - that DevTech failed to demonstrate a team wide collaborative approach to improving the web-site--is unreasonable because it references the term “user” or “user-specific” in this solicitation provision.

Similarly, DevTech also points to the following provision in the solicitation: “the website should become a world-class portal into FEWS NET’s entire base of knowledge [which] will require substantial consultations with FEWS NET 7 Team members, as well as surveys and outreach to website users (such as researchers, humanitarian and development practitioners, and worldwide food security network partners).” RFP at 52. However, providing surveys and websites to users other than team members does not

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NET in specific, shared tasks and activities to accomplish the same or similar goals and objectives. Id.

demonstrate that the agency's concern over DevTech's failure to provide a collaborative approach with team members to improve the website was unreasonable.⁶ Notably, the solicitation provision specifically references that substantial consultations with team members will be required. See id.

DevTech also argues that its proposal does provide descriptions of how FEWS NET 7 Team members are involved in the decision making process. For example, DevTech references a statement in its proposal addressing subfactor 1.3. In that section of the proposal, DevTech states that it will use the stakeholder analysis completed in subfactors 1.1 and 1.2 as a baseline to understand evaluated current user requirements and translate them into intuitive website functionality for each specific use case uncovered by the stakeholder analysis. Protest at 58; Supp. Protest and Comments, Aug. 27, 2018, at 56-57. According to DevTech, this statement demonstrates that it intended to use the analysis performed by members in addressing subfactors 1.1 and 1.2 to guide the decision making process under subfactor 1.3. DevTech maintains that it is clear stakeholders included team members.

In its proposal, in addressing subfactor 1.1, DevTech states:

[DELETED]

AR, Tab 6, DevTech Proposal, at 3.

We agree with the agency that proposing to complete an analysis of undesignated stakeholders is not the same as proposing a plan to collaboratively design those changes with team members. As the agency explains, as proposed, the stakeholder analysis was not a collaborative process with FEWS NET team members. Rather, it was a one-time, initial needs assessment performed in conjunction with subfactors 1.1, and 1.2. Supp. Memorandum of Law (MOL), Sept. 24, 2018, at 11. While DevTech states that it will use the assessment in meeting its obligation under subfactor 1.3 to make improvements in the website, in addressing subfactor 1.3 in its proposal there is no discussion of managing a collaborative process among team members to do so.

Finally, DevTech points to a statement in its proposal where it indicates that it will provide ample time for subject matter experts and stakeholders at all stages of the

⁶ DevTech points to a diagram in its proposal showing that it understands that users and team members are not the same. Protest at 59. The agency's concern, however, was not with just whether DevTech understood the difference between users and team members, but with whether DevTech understood that the web site is a shared resource with the other team members and that it was supposed to propose a collaborative approach with the other team members to improve the website. See AR, Tab 7, TEM, at 61. A diagram showing that the two groups are different does not make unreasonable the agency's view that in its proposal, DevTech did not demonstrate a collaborative approach with the other team members to improve the website.

process to review and validate updates of the system, and that user acceptance testing will be open to FEWS Net team members. Supp. Protest and Comments, Aug. 27, 2018, at 57. According to DevTech, this statement demonstrates its team wide collaborative approach to improving the web site. We find reasonable the agency's conclusion that giving ample time for subject matter experts and stakeholders to review and validate updates, and allowing team members to test changes, is not a description of a plan that actually includes team members in the decision making process for small and large changes to the website. See COS at 33; AR, Tab 7, TEM, at 61.

Accordingly, we find the agency's evaluation, and assignment of a significant weakness reasonable. DevTech's disagreement with the agency's evaluation does provide a basis to sustain the protest. See InGenesis, Inc., supra.

Institutional Capabilities, Management Approach and Staffing

DevTech's proposal was assigned an overall rating of marginal under the institutional capabilities, management approach and staffing factor. In its evaluation, the agency assigned DevTech's proposal one significant strength under subfactor 2.1-demonstrated institutional experience; one significant weakness under subfactor 2.2-realistic and achievable management plan; and three strengths and two deficiencies under subfactor 2.3-staffing. AR, Tab 7, TEM, at 62-64. DevTech challenges the assignment of each significant weakness and deficiency. We have reviewed the record and find that the evaluation was reasonable. We address one of the deficiencies as a representative example.

The solicitation required offerors to propose four key personnel, including a web manager that met specified education and experience requirements. As relevant to this protest, the web manager was required to have a minimum of eight years of full-time professional experience leading complex website design, development, and implementation processes, including adding sophisticated functionality to existing websites containing large volumes of diverse technical contents. RFP at 184, 255.

DevTech's proposal was assigned a deficiency under the staffing subfactor based on the agency's conclusion that DevTech's proposed web manager did not meet the experience requirements set forth in the solicitation. AR, Tab 7, TEM, at 64. The resume DevTech submitted for its proposed web manager included the following experience information: senior software and technical manager at [DELETED] (2010-present); freelance IT consultant (2006-2010); web developer for [DELETED] (2004-2006); and web program manager for [DELETED] (2004). AR, Tab 6, DevTech Proposal, at LXVI-LXVII.

With respect to the position as a freelance consultant, the resume stated that the individual, among other things, "[m]anaged a small team of programmers to develop a suite of web applications to support [DELETED] marketing campaigns, as well as a prototype system for tracking sales leads that facilitated cooperation with vendor partners." Id. With respect to leadership and management as a web developer at

[DELETED], the resume stated the individual “[s]erved as the lead analyst for migration of [DELETED] old accounting and order management systems to a modern ERP system” and “[led] the design and development of various web sites for [DELETED] marketing department.” Id. Finally, with respect to leadership and management as a web programmer at [DELETED], the resume stated the individual “[led] the specification and design of a marketing campaign management system.” Id.

The agency credited DevTech’s proposed web manager with six years of relevant experience based on his employment with [DELETED]. In this regard, the agency explains that since the solicitation closed in 2016, it attributed the six years of the web manager’s experience at [DELETED] from 2010-2016, as applying to the solicitation’s required eight years of full-time employment experience. COS at 11. The agency further reports that it reviewed the positions the candidate held prior to his employment at [DELETED], but did not find that they met the solicitation standards for leadership, complexity, or both. Specifically, the agency did not find that the web manager had any other positions, other than the one at [DELETED], that reflected clear experience leading complex website design, development and implementation processes. Id. at 12. The agency explains that the web manager’s experience as a freelance consultant leading a small team of programmers was not considered because it did not meet the solicitation’s requirement for full-time employment. Id.; Second Supp. COS at 9. The agency also did not consider the web manager’s experience at [DELETED] and [DELETED] as applying towards the eight years of required experience because the resume did not describe a leadership or management role, or involve leading the development of a complex and large website. Id.

DevTech complains that there is no basis for the agency to conclude that the web manager’s experience as a freelance consultant at [DELETED] between 2006 and 2010 was not full-time. Supp. Comments, Sept. 25, 2018, at 12-13. DevTech notes that the web manager managed a small team of programmers, developed a custom content management system, and designed and implemented web sites for various small businesses. Id. at 12. According to DevTech, some of the proposed web manager’s experience working as a freelance consultant should have counted toward the solicitation’s eight years of required experience. Id. at 12-13.

We agree that the agency reasonably did not attribute the web manager’s experience as a freelance consultant to the required eight years of experience. As noted, the solicitation required eight years of full-time experience leading complex website design, development, and implementation processes. The only leadership position DevTech points to during the web manager’s time as a freelance consultant as meeting this requirement was managing a small team of programmers. Since there is nothing in the resume that indicates how much time the web manager spent on this task, the agency reasonably decided not to consider it as counting towards the experience requirement..

DevTech also asserts that the web manager’s position at [DELETED] and [DELETED] should have counted towards the solicitation’s eight years of required experience. Supp. Comments, Sept. 25, 2018, at 12. In this regard, DevTech asserts that when the

proposed web manager worked at [DELETED], he led the design and development of various web sites for the marketing department and served as the lead analyst for migration of [DELETED] old accounting and order management system to a new system. Id. When the proposed web manager worked at [DELETED], he led the design of a marketing campaign management system while maintaining and developing websites and applications for [DELETED] solutions. Id.

The agency, however, did not consider that this was experience leading complex web design, development and implementation processes. Specifically, the agency concluded that the resume did not explain how this individual led the development of a complex and large website. MOL, Sept. 24, 2018, at 9. DevTech's disagreement does not demonstrate that the agency's conclusion was unreasonable. See InGenesis, Inc., supra.

Cost Realism

The solicitation provided that the agency would conduct a cost realism analysis to determine the completeness of the cost proposal and supporting documentation, and whether the proposed cost and level of effort were realistic for the work to be performed, reflected a clear understanding of the requirements and was consistent with the methods of performance set forth in the offeror's technical and budget narrative. RFP at 210, 211. As indicated above, the solicitation included an RFTOP, and notified offerors that the agency intended to issue the first task order for Pillar 2 at or soon after it awarded the IDIQ contract. The solicitation advised offerors that the cost realism analysis conducted would be based on the costs proposed in response to the RFTOP. Id.

DevTech submitted a cost proposal of \$29,671.721, which the agency adjusted to \$32,715,247, following its cost realism analysis. AR, Tab 15, Cost Analysis Memorandum at 7, 39. DevTech argues that the agency's cost realism analysis was unreasonable and inconsistent with the solicitation's requirements. Specifically, the protester argues that the agency unreasonably evaluated its labor rates and failed to adequately consider its costs in relation to its technical proposal. We disagree.

Where an agency evaluates proposals for the award of a cost-reimbursement contract, an offeror's proposed costs of performance are not dispositive, since, regardless of the costs proposed, the government is required to pay the contractor its actual and allowable costs. Jacobs COGEMA, LLC, B-290125.2, B-290125.3, Dec. 18, 2002, 2003 CPD ¶ 16 at 26. Accordingly, a cost realism analysis must be performed when a cost-reimbursement contract is contemplated in order to determine the probable cost of performance for each offeror. FAR § 15.404-1(d)(2). A cost realism analysis is the process of independently reviewing and evaluating elements of each offeror's proposed cost estimate to determine whether the proposed cost elements are realistic for the work to be performed, reflect a clear understanding of the requirements, and are consistent with the methods of performance and materials described in the offeror's

technical proposal. FAR § 15.404-1(d)(1). Our review is limited to determining whether an agency's cost realism analysis was reasonably based and not arbitrary. NV Servs., B-284119.2, Feb. 25, 2000, 2000 CPD ¶ 64 at 7. A protester's disagreement with the outcome does not render the evaluation unreasonable. Computer Sciences Corp. et al., B-408694.7 et al., Nov. 3, 2014, 2014 CPD ¶ 331 at 10 n.3.

As relevant to this protest, in responding to the solicitation for the award of the IDIQ contract, offerors (or proposed subcontractors where applicable) were instructed to propose unburdened ceiling daily rates for 18 required labor categories listed in section B of the solicitation. RFP at 186. Offerors were also permitted to propose and provide ceiling rates for additional labor categories that they expected to use in performing task orders. Id. These unburdened ceiling rates were the highest rates for both prime contractor and any proposed subcontractors that could be proposed in responding to task order proposals. Id. In addition, offerors were required to provide proposed indirect cost rates for fringe benefits, overhead, general and administrative (G&A) expenses, and a fixed-fee rate.⁷ Id. at 239-240.

To determine whether offerors' proposed labor rates were realistic, the agency created an acceptable market range for each labor category. In creating this acceptable market range for the labor categories required by the solicitation, the agency first took the average of the ceiling labor rates proposed for each labor category by all offerors that were rated higher than unacceptable for the non-cost factors.⁸ AR, Tab 15, Cost Analysis Memorandum, at 10.

The agency then established the lowest and highest acceptable rates. The lowest acceptable rate was a rate 13 percent below the average ceiling rate and the highest acceptable rate was a rate 13 percent above the average ceiling rate. Id. The agency used the government's General Schedule (GS) of labor rates as the basis for using 13 percent to compute the low and high rates. Id. In this regard, the GS schedule is comprised of fifteen grades, each of which has ten steps. The agency considered step 5 as the average rate, and the difference between step 1, the lowest salary in for each grade and step 5 is 13 percent. Id. Similarly, the variation between step 5 and step 10,

⁷ Although not relevant to this protest, offerors were also required to provide costs for travel and transportation, allowances, other direct costs, training, subcontractors, and surge activities. The agency evaluated the realism of these proposed costs.

⁸ The agency excluded from its calculation any rate that was 35 percent higher or lower than the average rate because these rates were considered major outliers. Supp. COS, Oct. 16, 2018, at 2. According to the agency, the proposed rates reflected fully burdened rates and therefore the agency excluded any rate that was 35 percent higher than the average. See id. In addition, there were proposed rates for field offices, and performance for the task order would be in the Washington, DC area, and therefore the agency excluded any rate that was 35 percent lower than the average. Id. While DevTech complains that the record does not support this position, we have no basis to question the agency's explanation.

the highest rate for each grade, is 13 percent. Id. The agency considered that the GS classification and pay system was a reasonable and informed classification system to consult in its realism computations. Id.

For labor categories that were not required by the solicitation, the agency established the acceptable market ranges using salary data from two online databases--O*Net Online and Indeed.com. AR, Tab 15, Cost Analysis Memorandum, at 10. In conducting its realism analysis, the agency adjusted any labor rate that was proposed for the RFTOP that fell below the low acceptable market range for the category to the low acceptable market range. Supp. COS, Aug. 28, 2018, at 2. In DevTech's case, the agency adjusted the labor rates proposed in the RFTOP for 18 labor categories proposed by DevTech, and four labor categories proposed by subcontractors.⁹ AR, Tab 15, Cost Analysis Memorandum, at 21, 31, 33.

DevTech asserts that it was unreasonable for the agency to use the GS scale, including the variation in the scale, to determine the acceptable low rates. Supp. Comments, Oct. 17, 2018, at 3. The protester asserts in this regard that there are many other government and commercially established market rate surveys for the relevant labor categories and ranges for those rates based on education and experience that the agency could have used. Id. at 6. DevTech's protest, however, amounts to no more than disagreement with the agency's evaluation methodology. In this regard, DevTech does not explain why using these other market rate surveys, but not the GS tables, would be reasonable. In sum, we have no basis to find that the agency's decision to use the GS schedule to establish the range of acceptable rates was unreasonable.

DevTech also asserts that the rate analysis is flawed because the agency used the ceiling daily rates that were proposed in responding to the solicitation for the IDIQ contract, rather than the rates that were proposed in responding to the RFTOP to establish the average ceiling daily rates. Supp. Comments, Oct. 17, 2018, at 8. The agency viewed the rates proposed by offerors responding to the IDIQ solicitation as reflecting the current market. Since these are the rates that the offerors presumably expect to propose in responding to solicitations for task orders, we find that it was reasonable for the agency to use these rates in assessing cost realism. DevTech's disagreement does not demonstrate that this approach was unreasonable.¹⁰

⁹ The adjustment to the labor rates also resulted in upward adjustments to the proposed cost for fringe benefits, overhead, G&A, and fixed fee because these costs are calculated from the base labor cost. Supp. COS, Aug. 28, 2018, at 2. In addition, other adjustments that are not relevant to this protest were made to DevTech's proposed cost, including in some cases reducing the proposed costs.

¹⁰ DevTech argues that the agency improperly used a predetermined formula to evaluate cost realism. This basis of protest is dismissed as untimely since DevTech knew the approach that the agency used to evaluate cost realism on August 28, but did not raise this issue until October 17, more than 10 calendar days later. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2).

Finally, DevTech complains that the cost realism analysis is flawed because the agency did not determine the completeness of the cost proposal and supporting documentation and whether the proposed cost and level of effort were realistic as related to the technical proposal, but instead applied an “acceptable rate” methodology to upwardly adjust its proposed costs. Supp. Comments, Oct. 17, 2018, at 7-8. We disagree.

In conducting its cost realism analysis, the technical evaluation committee specifically reviewed the cost elements of DevTech’s proposal and considered, among other things, whether the type of labor, skill mix, level of effort, number of trips and frequency of travel proposed, equipment costs, other direct costs, training and security, and subcontractor costs were adequate for the work as articulated in DevTech’s technical approach, and demonstrated an understanding of the solicitation requirements. AR, Tab 14, Cost Realism Checklist for Technical Evaluation Members, at 3-8. For example, the technical evaluation team considered that DevTech proposed a skill mix and key personnel that were adequate to fulfill DevTech’s technical approach. Id. at 4. This evaluation encompasses both the completeness of the cost proposal and consideration that the costs proposed were adequate for DevTech to perform, as proposed in its technical proposal. We therefore find no basis to sustain the protest.

Past Performance

DevTech asserts that it should have been assigned a past performance rating of exceptional based on the number of strengths it was assigned (26 significant and 10 strengths with no weaknesses or deficiencies), and the mix of ratings it received for its past performance (exceptional, very good and satisfactory). Supp. Protest and Comments, Aug. 27, 2018, at 19-22. However, even if we accept DevTech’s position that it should have been rated exceptional, DevTech has failed to demonstrate that it was prejudiced by any errors in the agency’s evaluation of its past performance.

Competitive prejudice is an essential element of a viable protest; where the protest fails to demonstrate that, but for the agency’s actions, it would have had a substantial chance of receiving the award, or in this instance included in the competitive range, there is no basis for finding prejudice, and our Office will not sustain the protest. Swets Info. Serv., B-410078, Oct. 20, 2014, 2014 CPD ¶ 311 at 14.

According to the competitive range determination, DevTech’s “past performance contributed positively to USAID’s expectation of successful contract performance. However, this was undermined by the various technical issues, a confusing management plan, and key personnel that did not meet the minimum requirements.” AR, Tab 11, Competitive Range Memorandum, at 14-15. It is well established that ratings, be they numerical, adjectival, or color, are merely guides for intelligent decision making in the procurement process. Louis Berger Group, Inc., B-407715 et al., Jan. 25, 2013, 2013 CPD ¶ 55 at 12. The essence of an agency’s evaluation is reflected in the evaluation record itself, not the adjectival ratings. Id. In this regard, the agency considered the substantive merits of DevTech’s past performance in the competitive

range determination, and concluded the positive past performance was outweighed by the concerns with the technical proposal. Consequently, DevTech has not demonstrated that it was prejudiced even if the agency erred in assigning a very good to DevTech's past performance.

The protest is denied.

Thomas H. Armstrong
General Counsel