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Decision

Matter of: Tatitlek Technologies, Inc.

File: B-416711; B-416711.2; B-416711.3; B-416711.4

Date: November 28, 2018

Richard B Oliver, Esq., and J. Matthew Carter, Esq., Pillsbury Winthrop Shaw Pittman LLP, for the protester.

John R. Tolle, Esq., and H. Todd Whay, Esq., Baker, Cronogue, Tolle & Werfel, LLP, for Qi Tech, LLC, an intervenor.

Brian K. Kau, Esq., Department of the Navy, for the agency.

Louis A. Chiarella, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency failed to give adequate consideration to awardee's potential organizational conflict of interest is denied where the agency reasonably evaluated whether the awardee had unequal access to information, and where the protester's assertions fail to present hard facts indicating the existence of a conflict.
 2. Protest challenging the agency's evaluation of the protester's technical proposal is denied where the evaluation was reasonable and consistent with the solicitation.
 3. Protest challenging the agency's cost realism evaluation of the protester's proposal is denied where the record demonstrates the agency's conclusions were reasonable.
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DECISION

Tatitlek Technologies, Inc., a small disadvantaged business of Anchorage, Alaska, protests the issuance of a task order to Qi Tech, LLC, of McLean, Virginia, under request for proposals (RFP) No. N0017817R3058, issued by the Department of the Navy for administrative and clerical support services for the Navy's Naval Surface Warfare Center Dahlgren Division (NSWCDD), Dahlgren, Virginia. Tatitlek argues that the agency's evaluation of proposals and resulting award decision were improper.

We deny the protest.

BACKGROUND

The NSWCCD is responsible for providing comprehensive and dedicated support to the Navy's research, development, test and evaluation, analysis, systems engineering, integration and certification of complex naval warfare systems and fleet support efforts. Agency Report (AR), Tab 1, RFP, Statement of Work (SOW), § C.1. To achieve its missions, the NSWCCD developed the administrative and clerical support services SOW.¹ Id. § C.2.

The RFP was issued on August 10, 2017, pursuant to Federal Acquisition Regulation (FAR) subpart 16.5, to 8(a) small business holders of Navy SeaPort-e indefinite-delivery, indefinite-quantity (IDIQ) contracts.² RFP at 4; Contracting Officer's Statement (COS)/Memorandum of Law (MOL) at 2. The solicitation provided for the issuance of a cost-plus-fixed-fee, level-of-effort task order for a base year with four 1-year options. In general terms, the RFP required the contractor to provide qualified personnel to successfully perform all specified SOW tasks. SOW §§ C.2, C.4. The RFP established that task order award would be made on a best-value tradeoff basis, based on six evaluation factors in descending order of importance: recruitment and retention of personnel (hereinafter recruitment/retention); scenario; management capability; workforce; past performance; and cost.³ RFP §§ M.1, M.3, M.7.

Eight offerors, including Qi Tech and the incumbent Tatitlek, submitted proposals by the September 26 closing date. A technical evaluation team (TET) evaluated the noncost proposals using various adjectival rating schemes that were set forth in the solicitation as follows: outstanding, good, acceptable, marginal, or unacceptable for the recruitment/retention, scenario, management capability, and workforce factors; and substantial confidence, satisfactory confidence, limited confidence, no confidence, and unknown confidence (neutral) for the past performance factor. A separate cost/price evaluation team (CPET) assessed, but did not rate, cost submissions for reasonableness and realism. Based on the initial evaluation of proposals, both Qi Tech and Tatitlek were among the offerors included within the competitive range. COS/MOL at 6.

¹ For example, the SOW called for support with these types of services: typing and filing of correspondence, mail processing, telephone calling/answering, greeting visitors, copying and scanning of documents, electronic and manual data entry, lock and key control, spreadsheet preparation, and meeting support.

² The solicitation was subsequently amended six times. Unless specified otherwise, all citations are to the final version of the solicitation.

³ The recruitment/retention and scenario factors were of equal importance to each other, as were the workforce and past performance factors. RFP § M.7.

The Navy thereafter conducted discussions, and offerors submitted their final proposal revisions (FPR) by May 30, 2018. The TET and CPET evaluated the FPRs, with the final evaluation ratings and costs of the Qi Tech and Tatitlek proposals as follows:

	Qi Tech	Tatitlek
Recruitment/Retention	Outstanding	Marginal
Scenario	Good	Good
Management Capability	Good	Acceptable
Workforce	Outstanding	Good
Past Performance	Substantial Confidence	Substantial Confidence
Overall	Outstanding	Acceptable
Proposed Cost	\$52,235,144	\$48,529,172
Evaluated Cost	\$52,235,144	\$49,069,421

AR, Tab 7, TET Report, at 4-5; Tab 8, CPET Report, at 6.

The agency technical evaluators also identified strengths and weaknesses in the proposals in support of the adjectival ratings assigned. For example, under the recruitment/retention factor--the most important of the solicitation's stated evaluation criteria--the TET identified seven strengths and no weaknesses in Qi Tech's proposal, and no strengths, one weakness, and one significant weakness in Tatitlek's proposal.⁴ AR, Tab 7, TET Report, at 39-40, 72-73. Similarly, the Navy cost evaluators prepared a detailed narrative for their cost realism analysis. AR, Tab 8, CPET Report, at 1-38.

On July 19, the Navy contracting officer acting as the source selection authority (SSA) received and reviewed the findings and recommendations of the agency evaluators. AR, Tab 9, Source Selection Decision, at 2-3. The SSA, when comparing the relative merits of the Qi Tech and Tatitlek proposals, found that Qi Tech's numerous technical advantages outweighed Tatitlek's lower evaluated cost (i.e., "the benefits offered by Qi Tech's Outstanding technical proposal justifies paying a 6.45% premium"), and that Qi Tech's proposal represented the overall best value to the government. *Id.* at 9-12.

After providing Tatitlek with notice of task order award on August 7, and a debriefing that concluded on August 15, this protest followed.⁵

⁴ The TET also made findings regarding the relevance and quality of offerors' past performance in support of the assigned ratings.

⁵ Because the value of the awarded task order is over \$25 million, this procurement is within our jurisdiction to hear protests related to the issuance of orders under multiple-award IDIQ contracts. 10 U.S.C. § 2304c(e)(1)(B).

DISCUSSION

In its original and first three supplemental protests, Tatitlek raises numerous issues regarding the Navy's evaluation of the offerors' proposals and resulting award decision. First, Tatitlek alleges that Qi Tech had an organizational conflict of interest (OCI) which the contracting agency failed to properly evaluate and mitigate. Tatitlek also contends the Navy's evaluation of its proposal under the recruitment/retention, management capability, and workforce evaluation factors--essentially every proposal shortcoming identified by the agency evaluators--was improper. The protester further alleges that the agency's cost realism evaluation of its proposal was unreasonable.⁶ Had the Navy performed a proper evaluation, Tatitlek argues, it would have been selected for award. Although we do not specifically address all of Tatitlek's complaints about the evaluation of proposals and the agency's selection decision, we have fully considered all of them and find that they afford no basis to affect the agency's selection decision.

OCI Evaluation of Qi Tech

Tatitlek contends that the agency's evaluation of Qi Tech's alleged OCI was improper. In support thereof, the protester alleges that Qi Tech had access to nonpublic Tatitlek information (e.g., invoices, bill rates, staffing, pay rates, indirect rates) as part of Qi Tech's performance of another government contract at NSWCDD that provided Qi Tech with an unfair competitive advantage in this procurement. Protest, Aug. 24, 2018, at 20-26. Tatitlek also contends the contracting officer's OCI review was unreasonable for concluding that Qi Tech did not have access to privileged data that would provide it with a competitive advantage. Id. We find no merit to the protester's challenge.

The situations in which OCIs arise, as described in FAR subpart 9.5 and the decisions of our Office, can be broadly categorized into three groups: unequal access to information, biased ground rules, and impaired objectivity. See McConnell Jones Lanier & Murphy, LLP, B-409681.3, B-409681.4, Oct. 21, 2015, 2015 CPD ¶ 341 at 13. As relevant here, an unequal access to information OCI exists where a firm has access to nonpublic information as part of its performance of a government contract, and where that information may provide the firm a competitive advantage in a later competition for a government contract.⁷ FAR § 9.505-4; Cyberdata Techs., Inc., B-411070 et al.,

⁶ In its first four protests Tatitlek also raised other evaluation challenges (e.g., the evaluation of its proposal under the scenario factor, the evaluation of Qi Tech's proposal under the recruitment/retention, workforce, and past performance factors), but subsequently elected to withdraw these additional protest grounds. Tatitlek Letter to GAO, Nov. 14, 2018, at 3; Tatitlek Letter to GAO, Nov. 16, 2018, at 1-2.

⁷ Although not relevant to this protest, the second OCI group comprises cases where a firm, as part of its performance of a government contract, has in some sense set the ground rules for another government contract by, for example, writing the solicitation or statement of work: the primary concern in these "biased ground rules" cases is that the firm could skew the competition, whether intentionally or not, in favor of itself. FAR

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May 1, 2015, 2015 CPD ¶ 150 at 6; CapRock Gov't Solutions, Inc. et al., B-402490 et al., May 11, 2010, 2010 CPD ¶ 124 at 25.

We review the reasonableness of a contracting officer's OCI investigation and, where an agency has given meaningful consideration to whether a significant conflict of interest exists, we will not substitute our judgment for the agency's, absent clear evidence that the agency's conclusion is unreasonable.⁸ Systems Made Simple, Inc., B-412948.2, July 20, 2016, 2016 CPD ¶ 207 at 7; McConnell Jones Lanier & Murphy, LLP, supra. In this regard, the identification of conflicts of interest is a fact-specific inquiry that requires the exercise of considerable discretion. Systems Made Simple, Inc., supra; see Axiom Res. Mgmt., Inc. v. United States, 564 F.3d 1374, 1382 (Fed. Cir. 2009). A protester must identify hard facts that indicate the existence or potential existence of a conflict; mere inference or suspicion of an actual or potential conflict is not enough. TeleCommunication Sys. Inc., B-404496.3, Oct. 26, 2011, 2011 CPD ¶ 229 at 3-4; see Turner Constr. Co., Inc. v. United States, 645 F.3d 1377, 1387 (Fed. Cir. 2011).

As set forth below, the record reflects that the contracting officer reasonably investigated and considered whether an OCI exists, and Tatitlek has failed to identify any hard facts indicating the existence or potential existence of the alleged conflict. Thus, we have no basis to question the contracting officer's conclusion that Qi Tech's participation in this procurement does not raise potential OCI concerns.

On September 9, 2013, the Navy issued task order No. N00178-11-D-6657-0002 to Qi Tech for professional and administrative support services for the NSWCDD Command/Operations Department. AR, Tab 12, Qi Tech Task Order, at 35-59. The performance work statement (PWS) for the Qi Tech task order contained a broad range of identified tasks, including "acquisition and procurement." Id. at 43. As part of its performance of the task order, Qi Tech was required to prepare and submit an OCI certification/

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§§ 9.505-1, 9.505-2; International Bus. Machs. Corp., B-410639, B-410639.2, Jan. 15, 2015, 2015 CPD ¶ 41 at 6; CIGNA Gov't Servs., LLC, B-401068.4, B-401068.5, Sept. 9, 2010, 2010 CPD ¶ 230 at 10. The third OCI group comprises cases where a firm's work under one government contract could entail its evaluating itself, either through an assessment of performance under another contract or an evaluation of proposals. FAR § 9.505-3; L-3 Servs., Inc., B-400134.11, B-400134.12, Sept. 3, 2009, 2009 CP ¶ 171 at 5. In these "impaired objectivity" cases, the concern is that the firm's ability to render impartial advice to the government could appear to be undermined by its relationship with the entity whose work product is being evaluated. L-3 Servs., Inc., supra.

⁸ The FAR also requires that contracting officials avoid, neutralize, or mitigate potential significant conflicts of interest, so as to prevent an unfair competitive advantage or the existence of conflicting roles that might impair a contractor's objectivity. FAR §§ 9.504(a), 9.505.

mitigation plan that covered all its team members, which it did. Id. at 47, 57; see Qi Tech Comments, Oct. 1, 2018, attach. 1, Declaration of Qi Tech Program Manager, at 2. Relevant to this protest, one Qi Tech employee under this task order provides support to the NSWCDD Contracts Department.

The Navy contracting officer, in the course of planning the procurement here, conducted an analysis under FAR § 9.504(a) to identify and evaluate potential OCIs involving prospective offerors, including Qi Tech.⁹ COS, Sept. 17, 2018, at 1-6. The contracting officer first reviewed the work being performed by the Qi Tech employee as follows:

- Distributing post-award actions via email using a defined distribution list provided by the contract specialist for each action. The employee's task is distribution only; the task does not include reviewing the documents to be distributed or advising anyone as to their contents.
- Acting as the Contract Deficiency Report (CDR) point of contact by handling the distribution of CDRs to the cognizant contract specialist. To perform this task the employee passes a contract number and error type to the contract specialist.¹⁰

Id. at 4; see also Qi Tech Comments, Oct. 1, 2018, attach. 1, Declaration of Qi Tech Program Manager, at 1-2.

The contracting officer also performed an extensive review of the various information systems utilized by the NSWCDD Contracts Department and their accessibility by the Qi Tech employee. One such information system used by the NSWCDD Contracts Department is the wide area workflow (WAWF), which is a web-based contracting program used throughout the Department of Defense. COS, Sept. 17, 2018, at 1. WAWF consists of seven modules, each with a specific function, and an individual's access can be tailored and limited to specific modules. Id. Some WAWF modules contain contractor proprietary information (e.g., payment invoices, other financial information), but access is limited to government personnel. Id. at 2. Other WAWF modules (e.g., user training) do not contain contractor proprietary information. Id. Relevant to the protest here, the WAWF electronic document access (EDA) module is used to distribute awarded contracts and contract modifications to authorized personnel, and may contain certain contractor proprietary information (e.g., incentive fee percentages). Id. The WAWF CDR module contains information about CDRs issued

⁹ The contracting officer's analysis of potential OCIs also included an assessment of Tatitlek, which also had an employee that worked within the NSWCDD Contracts Department.

¹⁰ While the Qi Tech task order set forth additional acquisition and procurement tasks, the contracting officer also determined that "[a]ll other requirements in the [PWS] have instead been performed by Government personnel or were determined to no longer be required by the [NSWCDD] Contracts Department." Id. at 5.

(e.g., contractor name, contract number, type of contract deficiency) but does not contain contractor proprietary information. Id. The tasks performed by the Qi Tech employee involved access to the EDA and CDR modules. Id. at 4.

As part of the review, the contracting officer determined that none of the duties being performed by the Qi Tech employee in the NSWCCD Contract Department--distributing awarded contracts, contract modifications, and CDRs--involved access to contractor proprietary information. Id. at 5. The contracting officer also considered that the Qi Tech employee had executed a non-disclosure agreement (NDA) in the event that any contractor proprietary information was accessed. Id. at 5-6, attach. 2, Qi Tech NDA, at 1-2. Lastly, the contracting officer considered the certification provided by Qi Tech as part of its task order proposal here, stating that it had no potential OCIs under the solicitation. Id. at 6; see also Qi Tech Comments, Oct. 1, 2018, attach. 1, Qi Tech Program Manager Declaration, at 2 (describing the virtual firewall maintained between Qi Tech employees involved in proposal preparation and those performing NSWCCD contracts). The contracting officer thereafter concluded that there was no significant potential for an OCI or need for mitigation due to unequal access to information by Qi Tech.¹¹ Id. at 6.

Based on our review, we find that the contracting officer reasonably concluded that Qi Tech did not have an unequal access to information OCI. Contrary to Tatitlek's contentions, the record here reflects that the duties of the Qi Tech employee in question were extremely limited in nature and did not encompass the scope of tasks set forth in the PWS of Qi Tech's task order. The protester is therefore mistaken that Qi Tech provided "extensive acquisition and procurement support" to the Navy. Protest, Aug. 24, 2018, at 22. Moreover, consistent with the narrow set of tasks being performed by the Qi Tech employee in the NSWCCD Contracts Department, the agency provided the Qi Tech employee with access to only two specific WAWF modules, neither of which "gave Qi Tech personnel access to Tatitlek's invoices, bill rates, staffing, pay rates, and indirect rates," as the protester surmised. Protest, Aug. 24, 2018, at 23. Quite simply, the protester's alleged "hard facts" are erroneous ones.

We also find the contracting officer performed a reasonable OCI review. The record reflects that in performing her OCI review, the contracting officer reasonably reviewed pertinent information regarding the duties being performed by the Qi Tech employee in question as well as the government information systems that could be accessed. First, the contracting officer reasonably determined that none of the duties being performed by the Qi Tech employee involved accessing contractor proprietary information. Further, while the WAWF EDA module which the Qi Tech employee would use for contract award distributions may contain certain types of proprietary information (e.g.,

¹¹ The record reflects the contracting officer performed an identical review of the duties, information access, and NDA of the Tatitlek employee that worked in the NSWCCD contracting activity, and determined that the protester also did not have an unequal access to information OCI. COS, Sept. 17, 2018, at 3-6.

incentive fee percentages), the contracting officer reasonably considered that this proprietary information was both extremely limited in nature and its access was outside the scope of duties of the Qi Tech employee. In any event, Tatitlek does not allege that it had any such contracts where such information even existed and would have been accessible by the Qi Tech employee. See Protest, Oct. 1, 2018, at 14-19. Based on the gathered information, the contracting officer reasonably found that Qi Tech did not have access to privileged data that would provide it with a competitive advantage.

Even assuming for the sake of discussion that the Qi Tech employee did have access to non-public information as a result of performing the NSWCCD task order, Tatitlek has failed to present any hard facts that this information provided the awardee with a competitive advantage. See Systems Made Simple, Inc., supra, at 13. The record reflects that the Qi Tech employee executed an NDA, and that Qi Tech firewalled the employees involved in performing the NSWCCD task order. As Tatitlek has not established that Qi Tech ever accessed nonpublic information, or that any such access to information, provided Qi Tech with any kind of competitive advantage in the later competition, there is no basis to find that Qi Tech had an unequal access to information OCI. See ITT Corp.-Elec. Sys., B-402808, Aug. 6, 2010, 2010 CPD ¶ 178 at 5-6.

In trying to bolster its argument, Tatitlek points to all the actions the contracting officer did not undertake as part of her OCI inquiry (e.g., review the Qi Tech employee's computer records to see if she ever accessed Tatitlek proprietary information, investigate whether the Qi Tech employee ever communicated with members of the awardee's proposal preparation team). Protest, Oct. 1, 2018, at 15. The protester essentially argues that the contracting officer's inquiry was unreasonable because it did not find an OCI involving Qi Tech. We disagree. The record reflects that the contracting officer's inquiry was reasonable in light of the duties being performed by the Qi Tech employee here and the information which she could access. In sum, having failed to show, as alleged, that the Qi Tech employee's duties involved access to any Tatitlek proprietary information, the protester essentially expresses disagreement with the contracting officer's judgment regarding the scope of the OCI inquiry conducted (at least with regard to Qi Tech); such mere disagreement does not rise to the hard facts necessary to support a valid challenge. See Liquidity Servs., Inc., B-409718 et al., July 23, 2014, 2014 CPD ¶ 221 at 10. Consequently, this protest ground is denied.

Technical Evaluation of Tatitlek

Tatitlek also protests the Navy's technical evaluation of its proposal. Specifically, with regard to the recruitment/retention, management capability, and workforce evaluation factors, the protester alleges that: all assigned weaknesses were unreasonable; the agency improperly failed to identify various strengths in the offeror's submission; and the evaluation of the Tatitlek and Qi Tech proposals was disparate. We have reviewed all the protester's assertions and find no basis on which to sustain the protest.

The evaluation of proposals in a task order competition, including the determination of the relative merits of proposals, is primarily a matter within the contracting agency's

discretion, because the agency is responsible for defining its needs and the best method of accommodating them. Engility Corp., B-413120.3 et al., Feb. 14, 2017, 2017 CPD ¶ 70 at 15; URS Fed. Servs., Inc., B-413333, Oct. 11, 2016, 2016 CPD ¶ 286 at 6. Our Office will review evaluation challenges to task order procurements to ensure that the competition was conducted in accordance with the solicitation and applicable procurement laws and regulations. Engility Corp., supra, at 15-16. A protester's disagreement with the agency's judgment, without more, is not sufficient to establish that an agency acted unreasonably. Id. at 16.

The Navy, after evaluating offerors' initial proposals, conducted discussions in the form of written evaluation notices (EN). Once discussions ended, the Navy issued an RFP amendment which stated, "[o]fferors are reminded that all changes resulting from discussions must be incorporated into your Final Proposal Revision submissions. Your Final Proposal Revision will be evaluated as a stand[-]alone document." RFP amend. 4 at 2. Tatitlek subsequently submitted its FPR and, in most instances, the offeror incorporated its discussion responses into its FPR. COS/MOL at 6; AR, Tab 14, TET Declaration, Sept. 17, 2018, at 2. However, in four instances, Tatitlek's FPR did not address the weaknesses found in its initial submission--this included both a weakness and significant weakness under the most important recruitment/retention factor. AR, Tab 14, TET Declaration, Sept. 17, 2018, at 2. In such circumstances, the TET found Tatitlek had failed to satisfactorily address the evaluators' concerns, and that the initially-identified weakness remained in the evaluation of the offeror's FPR. Id.

For example, the solicitation established that the recruitment/retention factor would involve evaluating an offeror's plan for recruitment and retention of personnel covered by the Service Contract Act (SCA), and the offeror's approach to filling SCA labor categories at the time of award. RFP § M.7.1; see also RFP § L.5.4.2(1)(a). The TET found that Tatitlek's initial recruiting/retention proposal failed to adequately address the offeror's ability to identify and provide individuals with the defined skill sets required in the solicitation. AR, Tab 2, Tatitlek Discussions, at 3. Specifically, the TET found:

Tatitlek states that "Tatitlek's current incumbent personnel fill 92% of the required positions on the follow-on NSWCCD Administrative and Clerical Support Services contract." Tatitlek also states that "having 92% of the workforce currently in-place ensures a lowered transition risk since there is no additional training required for most of the personnel." However, several of Tatitlek's incumbent personnel are access control personnel, who are not performing secretarial and administrative functions. These personnel do require training in order to transition into secretarial roles.

Id.

Tatitlek provided a detailed response to the Navy's discussion question but failed to include any part of this response in its FPR.¹² Compare AR, Tab 3, Tatitlek Discussion Responses, at 2, with Tab 5, Tatitlek FPR, Vol. II, Technical Proposal, at 6. As a result, the TET found that Tatitlek's FPR failed to address the additional training requirements for various incumbent personnel, and considered this to be a weakness "because it demonstrate[d] a lack of understanding of the capabilities and skill sets required to successfully perform administrative functions." AR, Tab 7, TET Report, at 39; see also Tab 14, TET Declaration, Sept. 17, 2018, at 5-6.

We find the Navy's evaluation to be reasonable and consistent with the stated evaluation criteria. As set forth above, the RFP required offerors to address their ability to identify and provide individuals with the defined skill sets required by the solicitation. The TET reasonably found that while Tatitlek's FPR had a high percentage of incumbent personnel in required positions, the skill sets of such personnel were not necessarily interchangeable ones for which no additional training would be required. Specifically, "several of Tatitlek's incumbent personnel are access control personnel, who are not performing secretarial functions such as travel order processing, timecard review and processing, and preparing correspondence in accordance with the Navy Correspondence Manual. These personnel do require training in order to transition into secretarial roles." AR, Tab 7, TET Report, at 39. The TET then reasonably concluded that the unaddressed weakness demonstrated a lack of understanding of the skill sets required to successfully perform the task order. Id.

Tatitlek contends that the agency's evaluation was unreasonable. The protester first maintains that, notwithstanding the express solicitation instruction that the FPR would be evaluated as a stand-alone document, it was improper for the Navy to ignore Tatitlek's discussion response when performing its evaluation. Protest, Oct. 1, 2018, at 19. Alternatively, Tatitlek argues that even without the discussion response being considered, the identified weakness was based on an unreasonable reading of the offeror's FPR. We disagree.

It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency. See International Med. Corps, B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 7. Agencies are not required to infer information from an inadequately detailed proposal, or to supply information that the protester elected not to provide. Optimization Consulting, Inc., B-407377, B-407377.2, Dec. 28, 2012, 2013 CPD ¶ 16 at 9 n.17. Moreover, an offeror runs the risk of having its proposal downgraded or rejected if the proposal is inadequately written or fails to comply with explicit preparation instructions. See Trofholz Techs., Inc., B-404101, Jan. 5, 2011, 2011 CPD ¶ 144 at 4-5; Omega World Travel, Inc., B-283218, Oct. 22,

¹² In its EN response, Tatitlek explained how incumbent access control personnel would receive additional training to ensure they were able to perform assigned secretarial and administrative functions. AR, Tab 3, Tatitlek Discussion Responses, at 2.

1999, 2002 CPD ¶ 5 at 5 (finding that an offeror's failure to comply with the explicit instructions for submitting its proposal falls short of its responsibility to submit an adequately written and complete proposal).

As set forth above, the solicitation clearly advised offerors that "all changes resulting from discussions must be incorporated into your Final Proposal Revision submissions. Your Final Proposal Revision will be evaluated as a stand[-]alone document." RFP amend. 4 at 2. Quite simply, the Navy's decision not to consider Tatitlek's EN response when evaluating the offeror's FPR was entirely consistent with what it told offerors it would do. We also find no merit to Tatitlek's assertion that, even without the discussion response, the offeror's proposal adequately addressed the solicitation requirements.¹³ Although Tatitlek's FPR may have discussed personnel training generally, it failed to specifically address how incumbent access control personnel would be prepared to successfully perform secretarial and administrative functions as the offeror proposed. The agency evaluators reasonably identified this as a weakness in Tatitlek's initial proposal, and the offeror's FPR did not address this concern.¹⁴

For example, as part of the initial evaluation of Tatitlek's recruitment/retention plan, the TET found the offeror's staff retention rates to be a significant weakness. See AR, Tab 2, Tatitlek Discussions, at 6. Specifically, the TET found that "Tatitlek notes that the retention rate on the current NSWCCD Clerical, Administrative, and Access Control . . . Support Task Order is 68% or that turnover is 32%. This high turnover rate demonstrates that the company's investment in staff retention is not effective." Id. Tatitlek, in discussions, provided an "extensive response" to address the Navy's identified concern, Protest, Aug. 24, 2018, at 29; see AR, Tab 3, Tatitlek Discussion Responses, at 7-8; however, the offeror again failed to incorporate the discussion response into its FPR. See AR, Tab 5, Tatitlek FPR, Vol. II, Technical Proposal, at 11. The Navy evaluators thereafter concluded that the high--and insufficiently addressed--turnover rate in Tatitlek's FPR was a significant weakness "because it increases risk to the Government that continuity of services will not be provided and it increases the level

¹³ Tatitlek now argues that because its discussion response "simply assured" the Navy that it planned to provide additional training as necessary, "there was no need [for it] to submit proposal change pages." Protest, Oct. 1, 2018, at 32.

¹⁴ Tatitlek also contends that the declarations of the TET chairperson constitute a "post-hoc reevaluation" of the offeror's proposal. Protest, Oct. 1, 2018, at 24. We disagree. We find the declarations to be entirely consistent with the contemporaneous evaluation record, and find that the declarations merely provide additional details regarding the evaluators' previous findings and conclusions. We therefore view the evaluator's declarations to be post-protest explanations that provide a detailed rationale for contemporaneous conclusions, and not post-hoc rationalizations. Compare NWT, Inc.; PharmChem Labs., Inc., B-280988, B-280988.2, Dec. 17, 1998, 98-2 CPD ¶ 158, with Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91.

of effort required to train and orient new personnel.” AR, Tab 7, TET Report, at 40; Tab 14, TET Declaration, Sept. 17, 2018, at 6-8.

We find the agency’s evaluation here to be reasonable. Tatitlek’s FPR represented that it had a 32% personnel turnover rate on its incumbent contract.¹⁵ Based on this high turnover rate, the agency evaluators reasonably concluded that Tatitlek’s investment in staff retention was not an effective one, and that this increased the risk to the Navy that continuity of services would not be provided. AR, Tab 7, TET Report, at 40. The TET also found that Tatitlek’s FPR did not adequately identify the actions the offeror would take to address this turnover risk (*i.e.*, specific retention policies and practices that would offset its high turnover rate). AR, Tab 14, TET Declaration, Sept. 17, 2018, at 7. While Tatitlek argues, among other things, that the agency failed to give sufficient consideration to other (non-incumbent) contracts where the offeror had higher retention rates, or to its alleged success in rapidly filling vacancies, Protest, Oct. 1, 2018, at 22-24, we find this amounts to mere disagreement with the agency’s judgment, which does not render the evaluation unreasonable. See HP Enter. Servs., LLC, B-411205, B-411205.2, June 16, 2015, 2015 CPD ¶ 202 at 5.

Tatitlek also alleges the Navy unreasonably failed to recognize various strengths in its technical proposal. Protest, Aug. 24, 2018, at 31-35, 38-40, 42. For example, under the recruitment/retention factor, the protester contends that its FPR identified five different staffing tools that would ensure Tatitlek’s ability “to successfully recruit, retain, and train personnel as well as provide personnel augmentation in response to workload increases or staff turnover,” and for which it failed to receive proper credit. Id. at 31. The record reflects the TET was aware of Tatitlek’s various staffing tools, and that the staffing tools were considered by the evaluators to have met the requirements of the RFP. AR, Tab 14, TET Declaration, Sept. 17, 2018, at 8-9. Specifically, “[i]n the judgment of the TET, the tools identified by Tatitlek in [its] FPR did not exceed the capability requirements of the Solicitation. The TET did not view these tools as fully detailed or providing unique benefit beyond industry standard techniques for recruitment.” Id. at 8.

We find the agency’s evaluation was reasonable. The RFP required an offeror to describe its plan to successfully recruit, retain, and train SCA personnel, and Tatitlek’s staffing tools were the means by which the offeror planned to meet this solicitation requirement. The agency evaluators made a reasoned judgment that the staffing tools in Tatitlek’s proposal did not exceed the capability requirements of the solicitation, nor provide any unique benefits to the government beyond industry standard techniques. In sum, meeting the stated requirement to successfully recruit and retain personnel was reasonably found not to exceed requirements, and was thus not identified by the agency as a strength.

¹⁵ Tatitlek’s FPR also represented that, by comparison, the national average turnover rate was 18.1%. AR, Tab 5, Tatitlek FPR, Vol. II, Technical Proposal, at 11.

Tatitlek also alleges the Navy's evaluation of technical proposals was unequal and disparate. Protest, Oct. 1, 2018, at 4-13. For example, the protester notes the agency evaluators assigned Qi Tech's proposal a strength under the recruitment/ retention factor for a demonstrated understanding of the growth of personnel requirements. Id. at 7. Tatitlek argues that insofar as its proposal also demonstrated the same understanding, but did not also receive a strength, the Navy's evaluation was unequal. Id. at 7-9.

The RFP instructed offerors to describe their management plan for SCA personnel recruitment, retention and training, "as well as personnel augmentation plan for responding to workload increases." RFP § L.5.4.2. The solicitation also informed offerors that the Navy expected the total level of effort to increase from 120.5 full-time equivalents (FTE) in the base year to 152.0 FTEs in the last option year. Id., § L.5.5. The TET found, in the evaluation of Qi Tech's recruitment/retention proposal, that the awardee had described a continuous recruitment process to meet this expected increase in demand for personnel. AR, Tab 7, TET Report, at 72-73; see AR, Tab 16, TET Declaration, Oct. 9, 2018, at 2-3. The agency evaluators also found this to be a strength because it demonstrated an understanding of the growth of personnel requirements over the life of the task order, thereby decreasing the risk that additional personnel would not be available to fill requirements in the option years. AR, Tab 7, TET Report, at 73. The TET did not find a similar strength in Tatitlek's FPR. See id. at 39-40.

In our view, Tatitlek's disparate treatment argument here is mistakenly premised on an "apples and oranges" comparison of offerors' proposals. The record reflects that Qi Tech's proposal described a continuous recruitment process to meet the RFP's growth of personnel requirements. The awardee's proposal also set forth the specific, proactive measures that would "provide additional assurance of high-quality candidate availability at time of award, option years, and beyond for any vacancies, and will provide a valuable starting point for the expected ramp up to 152 people in Option Year 4." AR, Tab 6, Qi Tech FPR, Vol. II, Technical Proposal, at 7, see Tab 16, TET Declaration, Oct. 9, 2018, at 3. In contrast, the agency evaluators found that although Tatitlek acknowledged the growth in personnel requirements, "Tatitlek does not clearly tie [its] recruitment process to address the growth in required FTEs" nor that it would "continue to refine and expand [its] candidate pool." AR, Tab 16, TET Declaration, Oct. 9, 2018, at 3. In sum, the record does not indicate that the offerors proposed the same features and were given different ratings. Rather, our review indicates that the offerors proposed different features and reasonably received different ratings.¹⁶

¹⁶ We find that Tatitlek's recruitment/retention plan was essentially equal to that of Qi Tech regarding demonstrated ability to recruit cleared and qualified personnel to meet solicitation requirements, and should have also received a strength as did the awardee. However, we also find that this would not have changed Tatitlek's "marginal" rating here, or the fact that Qi Tech's rating under the most important factor would remain two adjectival levels higher.

Cost Realism Evaluation of Tatitlek

Tatitlek also challenges the Navy's cost realism evaluation of its proposal. Specifically, the protester alleges that the agency's evaluation of Tatitlek's proposed overhead rate was unreasonable and resulted in an excessive adjustment to the offeror's proposed cost. As detailed below, we find no merit to Tatitlek's challenge to the agency's cost realism evaluation.

When an agency evaluates proposals for the award of a cost-reimbursement contract or task order, an offeror's proposed estimated costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. FAR §§ 16.505(b)(3); 15.305(a)(1); Engility Corp., *supra*, at 16; Innovative Test Asset Solutions, LLC, B-411687, B-411687.2, Oct. 2, 2015, 2016 CPD ¶ 68 at 14. Consequently, an agency must perform a cost realism analysis to determine the extent to which an offeror's proposed costs are realistic for the work to be performed.¹⁷ FAR §§ 15.404-1(d)(1), 16.505(b)(3); Solers Inc., B-409079, B-409079.2, Jan. 27, 2014, 2014 CPD ¶ 74 at 4. An agency's cost realism analysis requires the exercise of informed judgment, and we review an agency's judgment in this area only to see that the cost realism analysis was reasonably based and not arbitrary. TeleCommunication Sys., Inc., B-413265, B-413265.2, Sept. 21, 2016, 2016 CPD ¶ 266 at 10. The analysis need not achieve scientific certainty; rather, the methodology employed must be reasonably adequate and provide some measure of confidence that the agency's conclusions about the most probable costs for an offeror's proposal are reasonable and realistic in view of other cost information reasonably available to the agency at the time of its evaluation. *Id.*

The RFP established that the Navy would evaluate, among other things, the realism of offerors' proposed costs. RFP § M.7.6. Additionally, "[o]fferors are notified that the realism of proposed indirect rates will take historical actuals into consideration. Further, indirect rates significantly lower than recent actuals, or declining indirect rates may not be evaluated as realistic unless fully explained or maximums/caps [are] offered." *Id.*

Tatitlek's initial proposal included an overhead rate--which it applied to its direct labor and fringe benefit costs--of [DELETED]%. AR, Tab 15, CPET Declaration, Sept. 17, 2018, at 3. The cost evaluators found Tatitlek's proposed overhead rate to be inconsistent with the offeror's historical rates (its 3-year average for 2014-2016 was [DELETED]%), and the agency raised this issue in discussions. *Id.*; AR, Tab 2, Tatitlek Discussions, at 17.

¹⁷ The end product of a cost realism analysis is the total estimated cost (*i.e.*, "most probable cost") that the agency realistically expects to pay for the offeror's proposed effort, and it is the estimated cost, and not the offeror's proposed cost, that must be the basis of the agency's source selection determination. Innovative Test Asset Solutions, LLC, *supra*, at 14 n.19.

In its subsequent FPR, Tatitlek explained that:

Prior to 2017, Tatitlek Technologies, Inc. did not produce much revenue which resulted in extremely high and unstable Overhead rate fluctuations. From 2014 through 2016, Tatitlek Technologies, Inc. developed more business revenue, and we were able to begin reducing and stabilizing our Overhead rate. As Tatitlek Technologies, Inc.'s annual revenues increase, the overhead rates will continue to stabilize for Tatitlek Technologies, Inc. The "historical" costs for the pool rates . . . shown . . . below represent the new 2017 Tatitlek Technologies, Inc. subsidiary overhead pool, utilizing prior year costs.

AR, Tab 5, Tatitlek FPR, Vol. III, Cost Proposal, at 16-17.

Additionally, while Tatitlek continued to propose an overhead rate of [DELETED]%, the FPR stated that "Tatitlek will cap the overhead rate to a value not to exceed [DELETED]% per year, over the term of the contract." Id. at 17.

The CPET ultimately adopted the capped overhead rate included in Tatitlek's FPR. In this regard, the CPET first found the offeror had not fully explained or supported its earlier proposed overhead rate and thus determined it to be unrealistic. AR, Tab 15, CPET Declaration, Sept. 17, 2018, at 4. The cost evaluators also found that Tatitlek had completely revamped its overhead pools at the beginning of 2017: "[a]s a result, it was difficult for Tatitlek to provide three years of historicals to support their newly created Overhead rate. They created three years of historicals by applying the new 2017 Tatitlek Technologies, Inc. subsidiary overhead pool to their actual prior year costs for 2014, 2015, and 2016 . . ." AR, Tab 8, CPET Report, at 35-36. The CPET then found Tatitlek's proposed overhead rate cap of [DELETED]% to be realistic, and adjusted the offeror's proposed cost upward by approximately \$538,000.¹⁸ Id. at 36; AR, Tab 15, CPET Declaration, Sept. 17, 2018, at 4.

Tatitlek challenges the amount of the Navy's cost realism adjustment. The protester argues that the agency should have used the offeror's historical average rate of [DELETED]%, and not its overhead rate cap of [DELETED]%, as the basis of the cost realism adjustment. Tatitlek maintains that the error thereby overstated the offeror's evaluated cost adjustment by approximately \$[DELETED]. Protest, Oct. 1, 2018, at 52-54.

On this record we find reasonable the agency's cost realism analysis and upward cost adjustment. Agencies are given broad discretion in conducting cost realism evaluations, and Tatitlek's objection to the cost adjustment here does not provide a

¹⁸ The CPET also made a small adjustment to Tatitlek's work-year hours, an amount the protester does not challenge. AR, Tab 8, CPET Report, at 27-28; Protest, Oct. 1, 2018, at 51 n.10.

basis to question the Navy's conclusions regarding the realism of the firm's proposed costs. See Smartronix, Inc., B-413721.2, Feb. 22, 2017, 2017 CPD ¶ 59 at 6-7 (finding unobjectionable an agency's adjustment to an offeror's proposed labor amounts as part of a cost realism analysis); Systems Techs., Inc., B-404985, B-404985.2, July 20, 2011, 2011 CPD ¶ 170 at 6-7.

First, as set forth above, Tatitlek does not dispute that its proposed overhead rate was unrealistic and should have been adjusted upward--Tatitlek only disagrees with the amount of the adjustment. The record also reflects that the agency reasonably considered the information included in the offeror's FPR when performing its cost realism evaluation. Next, while Tatitlek asserted that its revenue stream--and therefore overhead rate--had stabilized, its proposal provided no year-over-year data to support this assertion. See AR, Tab 5, Tatitlek FPR, Vol. III, Cost Proposal, at 17. Moreover, the CPET observed that because Tatitlek had revamped its overhead pools at the beginning of 2017, "it was difficult for Tatitlek to provide three years of historicals to support their newly created Overhead rate." AR, Tab 8, CPET Report, at 35. Given the concerns regarding the reliability of Tatitlek's historical overhead rates, the agency evaluators reasonably decided to rely upon Tatitlek's overhead rate cap. In sum, the agency found Tatitlek's higher rate cap--rather than a lower historical average of questionable validity--represented the offeror's most probable overhead rate, and we find this to be reasonable.

The protest is denied.

Thomas H. Armstrong
General Counsel