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Decision

Matter of: TWD & Associates, Inc.

File: B-416834; B-416834.2; B-416834.3

Date: December 26, 2018

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Abigail T. Stokes, Esq., Gwendolyn A. Iaci, Esq., Allison M. Genco, Esq., and Toya H. Davis, Esq., Department of the Navy, for the agency.
Glenn G. Wolcott, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's assessment of various strengths and weaknesses in protester's technical proposal is denied where protest fails to establish that the agency's evaluation was unreasonable.
 2. Protester's assertion that its prior ratings as the incumbent contractor entitled it to a substantial confidence past performance rating, rather than a satisfactory confidence rating, is denied.
 3. Cost realism evaluation was reasonable where the agency upwardly adjusted protester's labor rates for failing to adequately substantiate rates that were based on decreasing current employees' salaries.
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DECISION

TWD and Associates, Inc., of McLean, Virginia, protests the Department of the Navy's award of a task order to Booz Allen Hamilton, Inc., of McLean, Virginia, pursuant to request for proposals (RFP) No. N00174-17-R-3024, to provide information technology (IT) support services for the Naval Sea Systems Command (NAVSEA). TWD, the incumbent contractor, challenges various aspects of the agency's source selection process, including the agency's technical evaluation, past performance evaluation, and cost realism evaluation.

We deny the protest.

BACKGROUND

On May 5, 2017, pursuant to Federal Acquisition Regulation (FAR) § 16.505(b), the agency issued RFP No. N00174-17-R-3024 to contractors holding SeaPort-e multiple award indefinite-delivery, indefinite-quantity (IDIQ) contracts. The solicitation contemplated award of a cost-plus-fixed-fee, level-of-effort task order, and sought proposed personnel and associated labor rates to provide IT support services for NAVSEA's Enterprise Information Technology/Command Information Officer during a 1-year base period and four 1-year option periods. The solicitation provided for a best-value tradeoff based on the following evaluation factors: technical capability,¹ past performance,² and total evaluated cost.³ Offerors were required to submit their technical proposals, past performance proposals, and cost proposals in separate volumes.

With regard to staffing, the solicitation identified various labor categories, along with the number of full-time equivalent (FTE) personnel⁴ the agency estimated would be necessary in each category.⁵ Offerors were required to submit a proposed staffing plan with fully-loaded labor rates for its proposed personnel. More specifically, the solicitation directed that an offeror's staffing plan should propose named individuals to

¹ Under the technical capability factor, the solicitation established three subfactors: capabilities/experience, personnel, and management. Agency Report (AR), encl. 2.0, RFP at 103-05. The solicitation further provided that in evaluating proposals under this factor, the agency would identify strengths, weaknesses, significant strengths, significant weaknesses, and deficiencies, leading to assignment of the following adjectival ratings: outstanding, good, acceptable, marginal, or unacceptable. Id.

² The solicitation required offerors to submit certain specified past performance information, and provided that the agency would evaluate the relevance of an offeror's prior performance and the quality of that performance, leading to assignment of the following ratings: substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence. Id. at 89-91, 105-06.

³ The solicitation reminded offerors that the agency would perform a cost realism analysis, and provided that total evaluated cost would be the sum of the realistic costs for the base period and all option periods. Id. at 108. The solicitation also provided that non-cost factors, combined, were significantly more important than cost. Id. at 102.

⁴ The solicitation defined an FTE as 1,920 hours. Id. at 87.

⁵ The solicitation provided that "[t]he Offeror may deviate from the estimate provided, but such deviation shall be explained in the Offeror's narrative," id. at 87; however, the solicitation did not permit proposals to deviate from the government's total estimated level of effort, identified in section B of the solicitation. Id. at 91.

the maximum extent possible, and only permitted offerors to “include the word ‘pending’ in lieu of an individual’s name” where a candidate for the position had not yet been identified. RFP at 86. Consistent with this direction, the solicitation provided that “offerors should attempt to minimize the number of proposed labor personnel for which candidates have not been identified,” warning that technical capability and cost realism risk “would be expected to increase when candidates have not been identified.” Id. at 86-87.

With regard to proposed costs, the solicitation provided that “the burden of proof for cost credibility and realism rests with the Offeror,” and directed offerors to provide “historical substantiating data” for proposed labor rates. Id. at 91, 109. More specifically, the solicitation directed offerors to provide “[a]ctual direct-labor hourly rate payroll data, incurred within the last three months from the release of the solicitation, for each of the named individuals [being proposed].”⁶ Id. at 93. Finally, the solicitation warned that “if any of the Offeror’s proposed costs are considered to be unrealistically low based on all available relevant substantiating data, the Government will use higher costs.” Id. at 109.

On or before the July 10, 2017 closing date, proposals were submitted by eight offerors, including TWD and BAH. Notwithstanding the solicitation’s clear direction to minimize the number of unnamed personnel, TWD’s proposal listed approximately [redacted] percent of its proposed personnel as “pending.” Further, although TWD identified all of its proposed personnel for the base performance period, it also proposed to replace [redacted] of those employees with “pending” personnel during the option periods--at significantly lower labor rates.

The proposals were thereafter evaluated, and the agency did not conduct discussions. In evaluating TWD’s proposal under the technical capability factor, the agency identified multiple strengths as well as several weaknesses.⁷ Accordingly, the agency assigned TWD’s proposal a rating of acceptable under the technical capabilities factor.⁸

In evaluating TWD’s past performance, the agency considered the past performance information TWD submitted, concluding that, while TWD’s prior performance was generally positive, there were aspects of it that did not warrant the highest possible

⁶ In this context, the solicitation noted that submission of data purporting to substantiate proposed rates “without sufficient analysis and explanation of the relevance and reliability of that data” would result in an upward cost realism adjustment. RFP at 91-94.

⁷ The solicitation defined a weakness as “a flaw in the proposal that increases the risk of unsuccessful contract performance.” Id. at 104.

⁸ The solicitation defined an acceptable rating as reflecting a proposal that “meets requirements and indicates an adequate approach and understanding of the requirements, and risk of unsuccessful performance is no worse than moderate.” Id.

rating. Accordingly, the agency assigned TWD’s proposal a rating of satisfactory confidence under the past performance factor.

Finally, in evaluating TWD’s cost proposal, the agency determined that TWD was proposing rates for some of its current employees that were based on salaries below the current salaries of those proposed personnel. The agency noted that TWD’s proposal asserted that TWD had offered “several additional benefits [to employees] in exchange for a reduction in salary,” see AR, encl. 3.2, TWD Cost Proposal, at III-2-3, but also noted that the only evidence to support TWD’s representation of any individual employee’s agreed-to salary reductions was a generic chart that simply listed various benefits.⁹ Specifically, nothing in TWD’s proposal identified the particular benefits any named employee had elected in exchange for a salary reduction. After considering the information TWD provided, the agency found TWD’s information insufficient to substantiate the lower proposed rates, concluding that the proposed employees’ current salaries were more realistic bases for calculating their direct labor rates. AR, encl. 5.0, Cost Evaluation Team (CET) Report at 51-52. Accordingly, the agency upwardly adjusted TWD’s total proposed cost by [redacted] (approximately [redacted] percent), from [redacted] to \$123,760,799. Id. at 48.¹⁰

Following the agency’s evaluation, TWD’s and BAH’s proposals were rated as follows:

	TWD	BAH
Technical Capability	Acceptable	Outstanding
Capabilities/Experience	Acceptable	Outstanding
Personnel	Acceptable	Good
Management	Good	Good
Past Performance	Satisfactory Confidence	Satisfactory Confidence
Total Evaluated Cost	\$123,760,799	\$122,230,815

AR, encl. 1.0, Contracting Officer’s Statement, at 8; AR, encl. 6.0, Source Selection Advisory Council’s (SSAC) Report, at 3.

⁹ Among other things, the chart listed [redacted]. AR, encl. 3.2 TWD Cost Proposal, at III-2-3, III-2-4.

¹⁰ A limited portion of this upward adjustment [redacted] was based on the agency’s realism analysis of the rates proposed for a few of TWD’s “pending” personnel in the option years. This adjustment was based on the agency’s comparison of the rates proposed for unnamed personnel to data on salary.com. Memorandum of Law at 11; AR, encl. 5.0, CET Report, at 48-52.

Thereafter, BAH's proposal was selected for award on the basis of its technical superiority and lower evaluated cost. This protest followed.¹¹

DISCUSSION

TWD challenges various aspects of the agency's source selection process, including the agency's technical evaluation, past performance evaluation, and cost realism evaluation.¹²

Technical Capability Evaluation

First, TWD protests that all of the weaknesses the agency identified in TWD's technical proposal were "unwarranted," and complains that several of the evaluated strengths in its proposal should have been evaluated as significant strengths.¹³ Protest at 33-54.

¹¹ As noted above, the task order was issued under the Seaport-e multiple award, IDIQ contract, and the awarded value of the order exceeds \$25 million. Accordingly, 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).

¹² Additionally, TWD asserts that it "has been informed" that the agency intends to modify the contract requirements. Protest at 31. Similarly, in a supplemental protest, TWD complains that, during a transition meeting, certain BAH personnel "would not confirm" their future involvement in contract performance and, when questioned, these BAH personnel "looked at each other and almost smiled." First Supp. Protest, at 2, 21. Finally, TWD asserts disparate treatment by the agency in evaluating proposals based on TWD's speculation regarding the content of BAH's proposal. Protest at 54-55.

First, in the event the agency subsequently modifies the contract in a manner that is beyond the scope of the solicitation, TWD may file a protest pursuant to our Bid Protest Regulations. Accordingly, TWD's protest based on its perception of the agency's future contract modification is dismissed. With regard to TWD's allegations challenging the agency's evaluation of what TWD speculates BAH proposed, and TWD's speculation regarding subsequent performance by BAH personnel, our Bid Protest Regulations require that a protest provide adequate factual and legal bases to support protest allegations. 4 C.F.R. § 21.1(c)(4). Neither of these allegations meets that requirement; accordingly, they are dismissed.

¹³ The solicitation defined a strength as "an aspect of an Offeror's proposal that has merit or exceeds specified performance or capability requirements in a way that will be advantageous to the Government during contract performance," and defined a significant strength as "an aspect of an Offeror's proposal that exceeds specified performance or capability requirements in a way that will be advantageous to the Government during contract performance and that appreciably decreases the risk of unsuccessful performance." RFP at 105.

In reviewing protests of awards in task order competitions, we do not reevaluate proposals but examine the record to determine whether the evaluations and source selection decision are reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations. DynCorp Int'l LLC, B-411465, B-411465.2, Aug. 4, 2015, 2015 CPD ¶ 228 at 7; Diamond Info. Sys., LLC, B-410372.2, B-410372.3, Mar. 27, 2015, 2015 CPD ¶ 122 at 7. Our role in reviewing protest allegations does not involve an independent assessment of the protester's proposal or substitution of our judgment for the agency's. See DynCorp Int'l LLC, *supra*. A protester's disagreement with the agency's judgment regarding the evaluation of offerors' proposals, without more, is insufficient to establish that the agency acted unreasonably. STG, Inc., B-405101.3 *et al.*, Jan. 12, 2012, 2012 CPD ¶ 48 at 7.

Here, we have reviewed all of the agency's evaluation assessments and find no basis to question any of them. For example, in evaluating TWD's technical proposal under the capabilities/experience subfactor, the agency assessed a weakness for TWD's proposed analysis of "Security Readiness Review (SRR) results," see AR, encl. 3.0, TWD Technical Proposal, at I-1-43, which the agency describes as an outdated process. Noting that the solicitation requires the contractor to, among other things, "[p]erform security testing, risk analysis, and verification using authorized audit tools and methods (such as DISA [Defense Information Systems Agency] SCAP [security content automation protocol] Compliance Checker . . .)," RFP at 42, the agency criticized TWD's proposal for its reliance on the outdated process, stating:

TWD Proposal . . . uses the outdated term Security Readiness Review (SRR) vulnerability, a term which is no longer used by DISA. Their description of an outdated process rather than the required DISA SCAP Compliance Checker in this section of the proposal demonstrates a lack of understanding of this requirement increasing risk of unsuccessful performance.

AR, encl. 4.0, Source Selection Evaluation Board (SSEB) Report, at 101.

TWD complains that the agency's evaluation reflected a "penchant for quarrelling with TWD's terminology," suggesting that SRR and SCAP Compliance Checker are interchangeable terms for the same process, and noting that the solicitation's list of acronyms included SRR. Protest at 37. TWD further complains that the agency's assignment of a weakness regarding TWD's proposal to use SRR results was "untenable" because, elsewhere in the proposal, TWD also referred to use of SCAP Compliance Checker, and the agency evaluated that aspect of TWD's proposal as a strength. *Id.* at 42.

The agency first responds to TWD's assertion that the evaluated weakness was based on terminology, maintaining that TWD's assertion is fundamentally inaccurate. In this regard, the agency explains that SRR and SCAP Compliance Checker are neither interchangeable terms nor the same process, elaborating that SRR refers to "a manual method to test and verify products' compliance with [DISA] requirements," while SCAP Compliance Checker "refers to a method, using specific standards, to automate

compliance evaluations of products.” Memorandum of Law at 16-17. The agency summarizes that the two processes are “discrete methods for conducting security testing and verification in support of risk analysis.” Id. The agency further maintains that neither the fact that SRR appears in the solicitation’s list of acronyms, nor TWD’s reference to SCAP Compliance Checker elsewhere in its proposal, mitigates TWD’s failure to recognize the obsolescence of the SRR process. In short, the agency maintains that TWD’s proposed reliance on the SRR process indicated that TWD is not up-to-date on current authorized audit tools--which the agency reasonably perceived to be a risk.

Based on our review of the record, we cannot find the agency’s assessment of this weakness to be unreasonable. Nothing in TWD’s various protest submissions meaningfully refutes the agency’s assertion that the two processes are separate and distinct, or that SRR is an outdated process. Further, it is clear that the agency’s assessment of a weakness reflected TWD’s proposed reliance on an obsolete process--not the terminology TWD used. Finally, in our view, neither TWD’s additional references to SCAP Compliance Checker, nor the fact that SRR appears in the solicitation’s list of acronyms, renders the substance of the agency’s concerns unreasonable.

By way of another example, in evaluating TWD’s technical proposal under the personnel subfactor, the agency assessed the following weakness:

[The solicitation] states: “Offerors should attempt to minimize the number of proposed labor personnel for which candidates have not been identified.” In their proposal . . . [TWD] only identified [redacted] of the proposed candidates by name, and the staffing approach removes seasoned personnel after base year to be replaced with yet-to-be-named personnel. The government is not confident in the Offeror’s ability to staff appropriately and this is viewed as a weakness.

AR, encl. 4.0, SSEB Report, at 103.

TWD protests that, because its proposal also received a strength with regard to its historical employee retention rate, it was unreasonable for the agency to assign the weakness identified above. We disagree.

As noted above, the solicitation specifically advised offerors that they should “minimize the number of proposed labor personnel for which candidates have not been identified,” and warned that technical capability risk “would be expected to increase when candidates have not been identified.” RFP at 86-87. Where, as here, TWD’s proposal effectively ignored this admonition, and proposed a technical approach based on its intent to replace [redacted] of the named employees with yet-to-be-identified candidates (at substantially lower labor rates), TWD’s historical employee retention rates do not render unreasonable the agency’s risk assessment regarding TWD’s proposed approach.

In summary, we have reviewed all of TWD's complaints regarding the agency's assessment of strengths and weaknesses in TWD's proposal and find no basis to sustain the protest. While TWD's various complaints regarding the evaluated weaknesses, and its similar assertions that several of TWD's proposal strengths should have been evaluated as significant strengths, reflect TWD's dissatisfaction with the agency's evaluation, none of TWD's complaints demonstrate that the agency's evaluation was unreasonable. TWD's protest challenging the agency's assignment of an acceptable rating to TWD's proposal under the technical capability factor is denied.

Past Performance Evaluation

Next, TWD protests that the agency unreasonably assigned TWD's proposal a past performance rating of "merely" satisfactory confidence, despite TWD's "clear entitlement" to a substantial confidence rating.¹⁴ Protest at 58, 61. More specifically, TWD asserts that, "as the successful incumbent with uniformly high past performance ratings," it was unreasonable for the agency to assign anything other than the highest possible past performance rating to TWD's proposal. Id. at 68

The agency responds that its evaluation of TWD's past performance reflected the agency's comprehensive consideration of all of TWD's past performance data, including "individual feedback, narratives, and ratings within the overall ratings" in order to determine "the degree to which TWD satisfied its customers." Memorandum of Law at 32-34; AR, encl. 4.0 SSEB Report at 110-16; AR, encl. 6.0, SSAC Report at 43. Based on that review, the agency determined that TWD's past performance assessments "were not uniformly exceptional." Memorandum of Law at 33. For example, in one prior contract, the agency assessed TWD as having "got[ten] off to a rough start" that required the customer to ask for a change to key personnel. AR, encl. 4.0, SSEB Report, at 111. Additionally, the agency refers to specific instances reflected in the past performance record where aspects of TWD's past performance were rated below the highest rating with regard to: completing tasks correctly the first time; completing tasks within the requested time frame; ability to resolve problems; ability to effectively manage costs, qualified personnel; accurate estimating; effective cost, schedule, and management control; and ability to manage its subcontractors. AR, encl. 9.0, Past Performance Questionnaires.

Based on the agency's analysis of TWD's past performance record, the agency concluded that TWD's past performance was generally positive, but not uniformly exceptional, concluding that there was a reasonable expectation that TWD would

¹⁴ The solicitation defined a satisfactory confidence past performance rating as indicating that "the Government has a reasonable expectation that the Offeror will successfully perform the required effort," and defined a substantial confidence rating as indicating that "the Government has a high expectation that the Offeror will successfully perform the required effort. Id. at 106.

successfully perform the required effort. AR, encl. 4.0, SSEB Report 108-16. Accordingly, in the agency's judgment, a satisfactory confidence rating was appropriate.

The evaluation of past performance, including assessments regarding the significance of an offeror's performance history, is a matter of agency discretion which we will not disturb absent clear evidence that the assessments are unreasonable. Yang Enters., Inc.; Santa Barbara Applied Research, Inc., B-294605.4 et al., Apr. 1, 2005, 2005 CPD ¶ 65 at 5-7; Acepex Mgmt. Corp., B-283080 et al., Oct. 4, 1999, 99-2 CPD ¶ 77 at 3, 5; TPL, Inc., B-297136.10, B-297136.11, June 29, 2006, 2006 CPD ¶ 104 at 12. Further, an agency is not required to ignore instances of past performance that were less than exceptional and/or required improvement. The Bionetics Corp., B-405145, B-405145.2, Sept. 2, 2011, 2011 CPD ¶ 173 at 7-8.

Here, we find nothing unreasonable in the agency's past performance evaluation. As noted above, TWD's past performance record, while generally positive, included instances of less than exceptional performance, including a "rough start" that required TWD to replace key personnel. While TWD may believe that it was "clearly entitled" to the highest possible past performance rating, TWD's past performance record did not mandate that rating. In our view the agency's assignment of a satisfactory confidence past performance rating was reasonable, and TWD's protest assertions to the contrary are without merit.

Cost Realism Evaluation

Finally, TWD protests the agency's cost realism evaluation, asserting that the agency's upward adjustments of TWD's proposed labor rates were unreasonable, because TWD's proposal stated that it had offered its current employees "additional benefits in exchange for a salary reduction"; represented that some employees had agreed to lower salaries; and stated that all employees would be [redacted]. Protest at 63; see AR, encl. 3.2 TWD Cost Proposal, at III-2-3, III-2-4. More specifically, TWD complains that it was unreasonable for the agency to conclude that TWD had not adequately substantiated the realism of its proposed labor rates.

The agency responds that the information presented in TWD's proposal was inadequate to substantiate TWD's representation that TWD employees were willing to accept reduced salaries. In this regard, the agency notes that the only purported evidence in TWD's proposal was a chart that identified various benefits TWD had offered. The agency states that it reviewed that chart and found it contained no corroborating evidence of any particular employee's acceptance of lower salaries, nor identified any particular benefit or set of benefits an employee had accepted in exchange for a specific salary reduction; accordingly, the agency found the chart inadequate to substantiate the lower proposed labor rates.¹⁵ The agency elaborates that it could not reasonably

¹⁵ The agency notes that TWD's proposal stated: "The employees who chose to opt for additional benefits in lieu of salary [are] detailed in Section 1.8.1 herein." See AR, (continued...)

accept the lower proposed labor rates for current employees in the face of those employees' documented higher salaries without some corroborating evidence substantiating the employees' agreement. Memorandum of Law, at 5-6. In short, the agency maintains that, because it was unable to identify the particular benefits that any given employee had accepted in exchange for a corresponding salary reduction, and was unable to review any confirmation of the alleged agreements, it reasonably concluded that each employee's current salary provided a more realistic basis for calculating that employee's direct labor rate.

When an agency evaluates a proposal for the award of a cost-reimbursement contract or order, an offeror's proposed costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. FAR §§ 15.305(a)(1), 15.404-1(d); Exelis Sys. Corp., B-407673 et al., Jan. 22, 2013, 2013 CPD ¶ 54 at 7 (discussing FAR part 15 cost realism standards in a FAR part 16 task order procurement). Consequently, an agency must perform a cost realism analysis to determine the extent to which an offeror's proposed costs are realistic for the work to be performed. FAR § 15.404-1(d)(1); DynCorp Int'l LLC, supra, at 8. In assessing cost realism, an agency is not required to conduct an in-depth cost analysis, see FAR § 15.404-1(d)(1), or to verify each item; rather, the evaluation requires the exercise of informed judgment by the contracting agency. AdvanceMed Corp.; TrustSolutions, LLC, B-404910.4 et al., Jan. 17, 2012, 2012 CPD ¶ 25 at 13. Our review of an agency's cost realism evaluation is limited to determining whether the cost analysis was reasonably based and not arbitrary. Jacobs COGEMA, LLC, B-290125.2, B-290125.3, Dec. 18, 2002, 2003 CPD ¶ 16 at 26.

Here, based on our review of the record, we do not question the reasonableness of the agency's cost realism evaluation and, specifically, its upward adjustment of TWD's proposed labor rates. As noted above, the solicitation provided that "the burden of proof for cost credibility and realism rests with the Offeror"; directed offerors to provide substantiating data for proposed rates--and to sufficiently explain the relevance and reliability of that data; and specifically warned that failure to provide such sufficient explanation would result in an upward cost realism adjustment. RFP at 91-94. Notwithstanding these directions and warnings, TWD submitted proposed labor rates based on a general representation that some of its employees had agreed to accept salary reductions in exchange for additional benefits--but provided no basis for the agency to review the specifics of such purported agreements, or the realism thereof, for

(...continued)

encl. 3.2, TWD Cost Proposal, at III-2-4. However, TWD's proposal contained no section 1.8.1. Although the proposal contained a list of employees and identified the reduced salaries to which they had purportedly agreed, id. at III-3-1, III-3-2, the proposal did not disclose any particular benefits associated with any individual employee's salary reduction.

any particular employee. On this record, we reject TWD's protest challenging the reasonableness of the agency's cost realism evaluation.¹⁶

The protest is denied.

Thomas H. Armstrong
General Counsel

¹⁶ In its second supplemental protest, TWD asserted that the agency's cost realism evaluation was flawed because the agency "reject[ed]" its own independent government cost estimate (IGCE)--which TWD acknowledges "was more than \$19 million (or 15%) higher than the total evaluated cost of both [BAH] and TWD." Second Supp. Protest, at 1, 7-10. The agency responds that it did not rely on the IGCE (which was prepared before proposals were submitted) because, following receipt of proposals, the agency obtained data that it viewed as more reliable in the form of employees' current salaries and data from salary.com. Procuring agencies are not required to rely on IGCEs when performing cost realism evaluations. *See, e.g., CGI Fed. Inc., B-403570 et al.*, Nov. 5, 2010, 2011 CPD ¶ 32 at 7. Accordingly, TWD's protest based on the agency's decision not to rely on the IGCE fails to state a valid basis for protest, and is dismissed.