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Decision

Matter of: Booz Allen Hamilton, Inc.

File: B-417418; B-417418.2; B-417418.3

Date: July 3, 2019

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J. Scott Hommer, III, Esq., Rebecca E. Pearson, Esq., and Christopher G. Griesedieck, Esq., Venable, LLP, for Leidos, Inc., the intervenor.

Jennifer L. Howard, Esq., General Services Administration, for the agency.

Young H. Cho, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation of proposals and source selection decision is denied where the protester failed to demonstrate that, but for the apparent errors in its evaluation, it would have had a substantial possibility of receiving the award.

DECISION

Booz Allen Hamilton, Inc. (BAH), of McLean, Virginia, protests the issuance of a task order to Leidos, Inc., of Reston, Virginia, under task order request (TOR) No. 47QFCA19K0006, by the General Services Administration (GSA), for intelligence, surveillance, and reconnaissance (ISR) services in support of the Department of the Air Force (AF), Air Combat Command (ACC). The protester challenges the agency's evaluation of the proposals and the source selection decision.

We deny the protest.

BACKGROUND

On November 2, 2018, GSA issued the TOR, pursuant to Federal Acquisition Regulation (FAR) subpart 16.5, to vendors holding indefinite-delivery, indefinite-quantity (IDIQ) contracts under the GSA One Acquisition Solution for Integrated Services unrestricted pool 1. Contracting Officer's Statement (COS) at 1, 3; Agency Report (AR), Tab 6, TOR, amend. 4, at B-1. The TOR anticipated the issuance of a single cost-plus-

award-fee (CPAF) task order with a 1-year base period and four 1-year options to provide ISR support services to ACC and subordinate organizations.¹ TOR at F-1, C-1-C-2. The overall objective of the task order is to provide the AF ACC with a “highly effective and efficient intelligence gathering, analysis, and distribution program, as well as to provide training to facilitate ISR operations.” Id. at C-4.

The task order consolidates requirements from four prior task orders, two of which were performed by BAH and Leidos, respectively, and added additional requirements to account for any anticipated growth or programmed expanded operations.² COS at 1-2. Because the TOR consolidated requirements previously provided under separate contracts, the TOR explained that not all organizations and subtasks would require support at award, and that staffing would be phased in over time as the existing support services contracts expired until full operational capability (FOC) is achieved.³ TOR at C-9-C-10.

The TOR anticipated award on a best-value tradeoff basis considering price and the following factors, in descending order of importance: technical and management approach; key personnel and project staffing; and corporate experience.⁴ All non-cost or price factors, when combined, were significantly more important than cost or price. Id. at M-1, M-3.

GSA received timely written proposals from BAH and Leidos, who both participated in oral presentations.⁵ COS at 4. A technical evaluation board (TEB) was established to

¹ The TOR notified offerors that these subordinate organizations include the following: ACC/Intelligence Directorate (A2), 25th AF, 480th ISR Wing (ISRW), 363rd ISRW, 55th Wing, 70th ISRW, 24th AF, and AF Central Command. TOR at C-2.

² The TOR stated that the total estimated value of tasks 1 through 5 was between \$705,800,000 and \$780,100,000 (excluding other direct costs, tools, long-distance travel, and contract access fee) and that the total value for task 6 was “estimated to be approximately 14 percent of the CPAF of [t]asks 1, 3, 4, and 5.” TOR at L-3. The approximate aggregated value of the predecessor task orders was \$498 million. COS at 2.

³ The TOR defined FOC as: (1) all tasks are fully staffed with qualified and trained personnel; (2) contractor assumes full responsibility for management of all task order requirements; (3) all task order performance measures are in place and enforced; and (4) no further support is required from the outgoing contractors. TOR at C-10.

⁴ The TOR also contained pass/fail criteria that are not relevant here. TOR at M-1-M-2.

⁵ In addition to the written cost and technical proposal, the TOR required offerors to submit oral technical proposal presentation slides addressing two topics (technical and management approach; and key personnel and project staffing). TOR at L-14-L-18. The TOR advised that the government would combine the results of the written and oral
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evaluate the technical proposals.⁶ AR, Tab 14, TEB Report at 2-3. The cost/price proposals were evaluated by the contracting officer (CO). COS at 6; AR, Tab 15, Award Decision Document (ADD) at 32-33. The results of the technical and cost/price proposal evaluation were as follows:

	Leidos	BAH
Overall Technical	Excellent	Good
Technical and Management Approach	Excellent	Good
Key Personnel and Project Staffing	Excellent	Good
Corporate Experience	Good	Acceptable
Total Proposed Cost⁷	\$922,494,581	\$941,598,486

AR, Tab 15, ADD at 34.

The CO, acting as the source selection authority (SSA), performed a comparative assessment of the proposals and concluded that no tradeoff was necessary because Leidos' proposal was higher rated and lower priced than BAH's. Id. at 33-34. On March 15, 2019, BAH was notified of the agency's decision to award the task order to Leidos. After requesting and receiving a debriefing, this protest followed.⁸

DISCUSSION

BAH challenges GSA's evaluation of BAH and Leidos' proposals and the source selection decision. BAH also alleges that the agency treated offerors unequally in the evaluation of proposals and in the conduct of discussions.

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submissions to arrive at a rating for the technical evaluation factors as a whole. Id. at M-3.

⁶ The TEB voting members were personnel from GSA and the Air Force. See AR, Tab 14, TEB Report at 2. In addition to voting members, the TEB also included non-voting advisors from the Air Force. Id. at 3.

⁷ No adjustments were made to the offerors' proposed costs as a result of the CO's cost realism analysis, which determined that the offerors' proposed costs reflected the most probable costs to the government. AR, Tab 15, ADD at 32-33.

⁸ This protest is within our jurisdiction to hear protests of task orders valued in excess of \$10 million placed under civilian agency IDIQ contracts. 41 U.S.C. § 4106(f)(1)(B); Booz Allen Hamilton Eng'g Servs., LLC, B-411065, May 1, 2015, 2015 CPD ¶ 138 at 6 n.12. The authority under which we exercise our task order jurisdiction is determined by the agency that awarded the underlying IDIQ task order contract, which in this instance is GSA. Wyle Labs., Inc., B-413989, Dec. 5, 2016, 2016 CPD ¶ 345 at 4.

The evaluation of proposals in a task order competition, including the determination of the relative merits of proposals, is primarily a matter within the agency's discretion. Sevatec, Inc., B-416617, B-416617.2, Nov. 1, 2018, 2018 CPD ¶ 379 at 6; Wyle Labs., Inc., B-407784, Feb. 19, 2013, 2013 CPD ¶ 63 at 6. In reviewing protests challenging an agency's evaluation of proposals, our Office does not reevaluate proposals or substitute our judgment for that of the agency, but rather examines the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. MicroTechnologies, LLC, B-413091, B-413091.2, Aug. 11, 2016, 2016 CPD ¶ 219 at 4-5.

Prejudice

Competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest, even where flaws in the procurement have been shown. Information Sys. and Networks Corp., B-415720.3, B-415720.4, Apr. 30, 2018, 2018 CPD ¶ 165 at 10; The AEgis Techs. Grp., Inc.; Wingbrace, LLC, B-412884 et al., June 28, 2016, 2016 CPD ¶ 175 at 10-11.

Even though we have found several errors in the evaluation of the proposals, when the selection decision is viewed as a whole, we are unable to find that these errors were prejudicial. In this regard, the SSA's comparative assessment of the proposals compared the qualitative differences between the two proposals under each factor. Under the technical and management approach factor (the most important factor), Leidos was assessed seven strengths, one risk, and an overall excellent adjectival rating. In the SSA's comparative assessment, the SSA also identified numerous aspects of Leidos' "highly effective approach," that the agency found would "benefit the [g]overnment by eliminating redundancies and recognizing cost efficiencies." AR, Tab 15, ADD at 33. BAH has not challenged the TEB's evaluation or the SSA's assessment of Leidos' proposal under the most important factor.⁹

Under the same technical and management approach factor, BAH was assessed two strengths, two weaknesses, and an overall good rating. AR, Tab 14, TEB Report at 8-12. While BAH challenges one of the weaknesses, it does not challenge other aspects of its proposal that could otherwise warrant a change in its rating. Similarly, BAH challenges no aspect of the SSA's comparative assessment of its proposal under

⁹ BAH initially argued, but subsequently abandoned, its challenge to the agency's evaluation of Leidos' transition. Specifically, BAH failed to address the agency's response to its arguments. Compare Protest at 30-31 with AR, Memorandum of Law (MOL) at 9-11 with Protester's Comments & 2nd Supplemental (Supp.) Protest; Supp. AR at 2. Accordingly, we will not consider these arguments further. IntelliDyne, LLC, B-409107 et al., Jan. 16, 2014, 2014 CPD ¶ 34 at 3 n.3.

this factor, which specifically noted that the TEB found that BAH's proposal lacked detail in some areas that did not "enable the [g]overnment to determine the effectiveness of all proposed processes and methodologies to meeting [task order] objectives." AR, Tab 15, ADD at 34.

As discussed below, while we have identified errors in the agency's evaluation of Leidos' proposal under the two remaining non-cost factors, the key personnel and project staffing factor, and the corporate experience factor, BAH has not shown that it suffered prejudice from these errors. We also have considered BAH's arguments challenging the agency's cost evaluation, and based on the record before us, we do not find the agency's cost evaluation to be unreasonable.

In sum, while we have identified errors in the agency's evaluation of Leidos' proposal, BAH has not shown that it would have a substantial chance of award, given that Leidos would remain technically superior to BAH under the most important evaluation factor, technical and management approach, as well as being lower-priced. AAR Integrated Techs.; VT Miltope, B-417092 et al., Feb. 13, 2019, 2019 CPD ¶ 81 at 12. In filing and pursuing this protest, BAH has made arguments that are in addition to, or variations of, those discussed below. While we do not address every issue raised, we have considered all of the protester's arguments and conclude that none furnishes a basis on which to sustain the protest.¹⁰ We discuss below some of BAH's primary arguments.

¹⁰ For example, BAH raised numerous unsupported arguments based on the fact that one of Leidos' proposed key personnel is the subject of an ongoing investigation by the Air Force Office of Special Investigations (AFOSI) for procurement-related misconduct. Protest at 24-26; Protester's Comments & 2nd Supp. Protest at 24-43; Protester's Supp. Comments & 3rd Supp. Protest at 31-41. BAH primarily argued that GSA's award to Leidos was improper because GSA--which had not been informed of the investigation until after the protest was filed--failed to consider AFOSI's ongoing investigation prior to award. We are not aware of, nor has BAH provided support for, the proposition that GSA should have been aware of an ongoing criminal investigation by another agency before or during the agency's evaluation of proposals for a contract award. BAH also argued that Leidos gained an unfair competitive advantage because its proposed key person--who had been employed by the 25th AF as an unpaid consultant--had access to non-public information. Protester's Comments & 2nd Supp. Protest at 24-43; see also AR, Tab 28, BAH April 15, 2019 Procurement Integrity Act (PIA) Violation Letter; AR, Tab 29, Notice of PIA Violation Letter (providing various documents, including waiver of compensation and declarations of federal employment). Upon notification of BAH's claim, the CO investigated the matter. The declarations submitted by the individual's direct supervisor and the technical point of contact (POC) for the task order confirmed that this individual had no involvement with the procurement, including requirements development. See AR, Tab 22, Declaration of 25th AF Commander; AR, Tab 21, Declaration of Task Order Technical POC. While BAH disputes the adequacy of the CO's investigation and reasonableness of the agency's conclusions, on this record, we find no basis to sustain the protest. Northrop Grumman Sys. Corp.,

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Evaluation of Leidos' Project Staffing Plan

BAH argues that under the key personnel and project staffing factor GSA should have rejected Leidos' proposal as noncompliant and ineligible for award because Leidos failed to propose a labor solution as required by the TOR for task 6, surge support staffing. Protester's Comments & 2nd Supp. Protest at 9-11; Protester's Supp. Comments & 3rd Supp. Protest at 12-23. GSA responds that Leidos did not materially violate the terms of the TOR when it omitted this information because GSA was able to determine Leidos' approach and understanding of the requirements from the totality of information in Leidos' proposal. Supp. AR at 4-7; 2nd Supp. AR at 7-9; Agency Post-Hearing Comments at 14-18.

It is a fundamental principle of government procurement that competitions must be conducted on an equal basis, that is, offerors must be treated equally and be provided with a common basis for the preparation of their proposals. Continental RPVs, B-292768.2, B-292768.3, Dec. 11, 2003, 2004 CPD ¶ 56 at 8. Contracting officials may not announce in the solicitation that they will use one evaluation scheme and then follow another without informing offerors of the changed plan and providing them an opportunity to submit proposals on that basis. Fintrac, Inc., B-311462.2, B-311462.3, Oct. 14, 2008, 2008 CPD ¶ 191 at 6. An agency may waive compliance with a material solicitation requirement in awarding a contract only if the award will meet the agency's actual needs without prejudice to other offerors. Lockheed Martin Corp., B-411365.2, Aug. 26, 2015, 2015 CPD ¶ 294 at 14; Safety-Kleen (TS), Inc., B-284125, Feb. 23, 2000, 2000 CPD ¶ 30 at 2-3. Our Office will sustain a protest that an agency improperly waived or relaxed its requirements for the awardee where the protester establishes a reasonable possibility that it was prejudiced by the agency's actions. Datastream Sys., Inc., B-291653, Jan. 24, 2003, 2003 CPD ¶ 30 at 6.

The TOR's performance work statement (PWS) contained a detailed description of the task order's six task areas and their respective subtasks.¹¹ TOR at C-4-C-28. As relevant here, tasks 1 through 5 were considered "mandatory," while task 6 was considered to be "optional." Id. at B-2-B-6. With regard to task 6, the TOR advised that the purpose of this task was "to allow additional [task order] capacity in support of the AF ACC ISR requirements, because . . . augmentation of existing resources may be required." Id. at C-27. Accordingly, under task 6, the contractor was to provide surge support staffing that was within the scope of the requirements specified in tasks 1 through 5, and was "estimated to be approximately 14 percent of the CPAF of [t]asks 1, 3, 4, and 5." Id., see also id. at L-3.

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B-412278.7, B-412278.8, Oct. 4, 2017, 2017 CPD ¶ 312 at 12; Next Tier Concepts, Inc., B-406620.3, B-406620.4, Nov. 13, 2012, 2013 CPD ¶ 5 at 4.

¹¹ The six tasks areas are: (1) program management; (2) transition support; (3) analysis and assessment support; (4) training support; (5) intelligence support; and (6) surge support. TOR at C-4-C-28.

As relevant here, the TOR stated that for the key personnel and project staffing factor, the offeror's response to the requirements would be assessed on the degree of clarity, detail, effectiveness, efficiency, feasibility, relevancy, and benefits of its key personnel and project staff. Id. at M-4. Here, offerors were required to submit a project staffing plan in accordance with the project staffing plan template contained in the TOR.¹² Id. at L-11. Offerors were advised that "[i]nformation in the [p]roject [s]taffing [p]lan provides a basis for the [g]overnment to determine the efficacy of the [p]roject [s]taffing [p]lan in relation to the offeror's [t]echnical [a]pproach." Id. at L-12. The TOR specifically stated that the project staffing plan "shall contain all proposed individuals that will be working on this effort" and required that "[a]ll qualification sections of the proposed [p]roject [s]taffing [p]lan shall be completed uniquely for each person or TBD [to be determined] role provided."¹³ Id. at L-11-L-12. The solicitation also instructed offerors to ensure consistency in the level of effort (LOE) between the project staffing plan and the cost proposal. Id. at L-12.

Offerors also were required to separately provide a project staffing rationale. Id. at L-12. The solicitation instructed offerors to describe the rationale for their proposed labor mix and identify the LOE to support each TOR task, the factors that drove their proposed labor mix, and how their proposed staffing solution would accomplish the government's objectives and requirements. Id. Finally, offerors were required to address their project staffing approach in their oral presentations, describing the project staffing strategy, rationale for the proposed labor mix, and the experience, skills, and qualifications of the proposed personnel. Id. at L-18.

The TEB's evaluation of Leidos' project staffing plan and supporting rationale accurately recognized that Leidos proposed no hours for task 6 in its project staffing plan. AR, Tab 14, TEB Report at 25. In this regard, the TEB observed that "[t]here was some ambiguity in the [w]ritten [t]echnical [p]roposal, as the offeror presented hours for [t]ask 6 in its [p]roject [s]taffing [r]ationale but did not include those hours in the [p]roject [s]taffing [p]lan." Id. The TEB, however, found satisfactory Leidos' explanation that it based its estimated labor hours for task 6 on "the [g]overnment-provided reference of 14 percent" and would determine the actual skill level mix for task 6 based on the government's requirements for surge support because "surge hours are on an as needed basis." Id.; see also TOR at L-3 (providing the total value of task 6 to be approximately 14 percent of the value of tasks 1, 3, 4, and 5).

¹² The template required offerors to provide information regarding their proposed personnel, including names, security clearance levels, duty station location, proposed labor category, functional roles related to the task, qualifications, and labor hours. See AR, Tab 2, Original TOR, at 187-197.

¹³ The TOR allowed offerors to indicate as "to be determined (TBD)" non-key personnel whose names were not known prior to offer submission. TOR at L-11-L-12. The TOR nonetheless required offerors to "supply the offeror's proposed experience/certifications that would be needed to perform the proposed [t]echnical [a]pproach in that role." Id. at L-12.

Our Office conducted a hearing on June 6 and 7, 2019, to further develop the record with regard to BAH's protest. During the hearing, the TEB chair testified that the TEB made inferences with regard to Leidos' proposed labor mix for task 6, as well as the labor categories, qualifications, and clearance levels. Transcript (Tr.) at 195, 224, 249. In this regard, the TEB chair testified that because Leidos' proposal stated that task 6 (surge support) was based on the interdependencies of tasks 1, 3, 4, and 5, and because for each task area a labor mix was identified, the TEB inferred that Leidos' proposed labor mix for task 6 would be reflective of those proposed in tasks 1, 3, 4, and 5. Tr. at 195, 251, 252. Similarly, the TEB inferred that the labor categories, qualifications, and clearances for task 6--although not detailed in Leidos' proposal--would be comparable to those proposed for tasks 1, 3, 4, and 5. Tr. at 244, 260.

On this record, we agree with BAH that the agency relaxed the solicitation's requirements to provide a project staffing plan that identified all personnel, their qualifications, and proposed hours. However, as previously noted, where a protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest, even if deficiencies in the agency's evaluation of proposals are found. Imagine One Tech. & Mgmt., Ltd., B-412860.4, B-412860.5, Dec. 9, 2016, 2016 CPD ¶ 360 at 12. Similarly, where there is no basis for finding competitive prejudice to the protester, we will not sustain a protest challenging the waiver of a solicitation requirement. Phoebe Putney Mem'l Hosp., B-311385, June 19, 2008, 2008 CPD ¶ 128 at 4. Thus, even where an agency essentially relaxes or waives a material solicitation requirement, our Office will not sustain the protest unless the protester can demonstrate that it was prejudiced by the waiver, *i.e.*, that the protester would have submitted a different proposal or quotation, or that it could have done something else to improve its chances for award, had it known that the agency would waive the requirement. AAR Integrated Techs.; VT Miltope, *supra*.

Here, while BAH primarily argues that Leidos' failure to provide this information made its proposal ineligible for award, BAH also contends that had BAH known that it was not required to provide detailed staffing information for task 6, it would not have attempted to propose a specific approach, labor mix, and cost that ultimately resulted in multiple "demerits" by the agency and an increased price. See Protester's Post-Hearing Comments at 27-29. On this record, BAH's arguments provide no basis to sustain the protest.

In this regard, the "demerits" cited by BAH primarily refer to concerns raised by the TEB in describing a risk that the TEB assessed under this factor for BAH's proposed approach to provide surge staffing. Compare id. with AR, Tab 14, TEB Report at 15. Notably, BAH did not challenge this risk in its initial protest.¹⁴ More significantly, BAH

¹⁴ After filing its initial protest on March 25, 2019, BAH filed a supplemental protest on March 29 alleging one additional protest ground and consolidating the initial grounds of
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cannot show it suffered prejudice from the agency's relaxation of the requirements to provide a labor mix for task 6 where the risk identified by GSA reflected the agency's concerns about BAH's understanding of the surge requirements, not its proposed labor mix. AR, Tab 14, TEB Report at 15. For example, despite the fact that the TOR specifically informed offerors that, under task 6, the contractor was to provide surge support that was within the scope of the requirements specified in tasks 1 through 5, BAH's proposal indicated its unsupported assumption that surge staffing was "predominantly in Cryptologic Language, Intelligence, and Target Analyst" without any further explanation regarding its approach to fulfilling needs or other tasks requiring surge support.¹⁵ Compare TOR at C-27 with AR, Tab 9, BAH Written Proposal at O-2.

Further, the record shows that even if the requirement to provide a labor mix or identify labor hours for task 6 had been removed, BAH's cost or price would still be higher than Leidos'. In this regard, BAH's proposed costs for tasks 1 through 5 were higher than Leidos' costs for those tasks. AR, Tab 15, ADD at 5-6. Moreover, by its own admission, BAH's higher proposed costs were the result of its decision to propose "growth over time" or "targeted growth" based on its incumbent experience. Protest at 35-36. As explained by a senior BAH vice president (VP) involved in the preparation of BAH's proposal:

Consistent with historical levels of effort, [BAH] proposed increased [LOE] during the option years of this task order, which increased its total evaluated price ("TEP") significantly. We did not know at the time we submitted our proposal that [the agency] anticipate[d] that LOE will increase far less than it ha[d] on [BAH's] incumbent contracts Given the chance to revise our proposal, we would not propose any LOE growth for the option years in tasks 1 through 5.

Protester's Comments & 2nd Supp. Protest, exh. B, Declaration of BAH Senior VP at 1. Based on this record, BAH has not established that it was prejudiced by the agency's decision to relax the TOR's requirement to provide a project staffing plan that identified all personnel, their qualifications, and proposed hours for task 6. Accordingly, BAH's arguments provide no basis to sustain the protest.

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protest. All citations and references to the initial protest and protest are to the consolidated protest filed on March 29.

¹⁵ BAH also alleges that the agency engaged in disparate treatment in the evaluation of the offerors' surge staffing approaches, however, BAH has not established that the different evaluation results were not based on differences between the offerors' proposals. Protester's Supp. Comments & 3rd Supp. Protest at 21-23; Protester's 2nd Supp. Comments. Accordingly, we find no merit to this allegation. IPKeys Techs., LLC, B-414890, B-414890.2, Oct. 4, 2017, 2017 CPD ¶ 311 at 9.

Unequal Treatment

Subtask Level Staffing

BAH also argues that the agency's assessment of a weakness to its proposal for failing to allocate full-time equivalents (FTEs) at the subtask level was unequal because Leidos, similarly, did not allocate FTEs at the subtask level but was not assessed a comparable weakness. Protester's Comments & 2nd Supp. Protest at 49-51; Protester's Supp. Comment and 3rd Supp. Protest at 47. GSA responds that Leidos clearly identified in the slides from its oral presentation the FTE allocation by wing and location, allowing the evaluators to identify staffing levels at the subordinate wings. Supp. AR at 21-22.

It is a fundamental principle of federal procurement law that a contracting agency must treat all offerors equally and evaluate their proposals evenhandedly against the solicitation's requirements and evaluation criteria. Will Tech., Inc., Paragon TEC, Inc., B-413139.4 et al., June 11, 2018, 2018 CPD ¶ 209 at 11; Cubic Applications, Inc., B-411305, B-411305.2, July 9, 2015, 2015 CPD ¶ 218 at 7. Further, where an agency treats offerors unequally by, for example, reading some proposals in an expansive manner and resolving doubt in favor of the offeror, while reading other proposals narrowly and applying a more exacting standard that requires affirmative representations within the four corners of the proposal, we have found such evaluations to involve disparate treatment. Arctic Slope Mission Servs., LLC, B-410992.5, B-410992.6, Jan. 8, 2016, 2016 CPD ¶ 39 at 7; Lockheed Martin Info. Sys., B-292836 et al., Dec. 18, 2003, 2003 CPD ¶ 230 at 11-12.

Here, the TOR instructed offerors to address in their oral presentation the "rationale for projected staffing and approach to how each task and subtask is staffed to include estimated hours and labor mix of the [k]ey and non-[k]ey [p]ersonnel, their expected work location, clearance level, and functional knowledge." TOR at L-18. Because BAH's "proposed allocation of personnel at the subtask level was not clearly identified, and the TEB was unable to map FTEs across the contract to the subtask and subordinate AF ACC organization," BAH was assessed a weakness under the key personnel and project staffing factor. AR, Tab 14, TEB Report at 15. As relevant here, the TEB stated that the "inability to determine staffing levels at the subtask [level] could lead to improper or inequitable staffing allocation among subordinate wings." Id.

While we find that the agency's assessment of this weakness was consistent with the TOR, we agree with BAH that the agency has failed to provide a reasonable explanation as to why Leidos' proposal did not warrant a similar weakness. In this regard, the TEB chair testified during the hearing that because Leidos' oral presentation clearly identified FTEs by wing and location, the evaluators were able to identify staffing levels at the subordinate wing level. Tr. at 317; see also Agency Post-Hearing Comments at 19; AR,

Tab 32, Leidos Oral Technical Proposal Presentation at 92.¹⁶ However, Leidos' oral presentation slides show for each location, the subordinate organization serviced at that location, the total FTE count, and FTE allocation by task but did not show the FTE allocation at the subtask level. Id. While the TEB chair testified that during the evaluation of Leidos' proposal the TEB was able to determine the allocation of FTEs at the subtask level, the TEB chair was unable to articulate the specific allocation. Tr. at 317-323, 331-336. In addition, the TEB chair testified that the TEB did not note any concerns for Leidos. Tr. at 347. On this record, we agree that the agency's assessment of a weakness to BAH's proposal, but not to Leidos's proposal, for failing to allocate FTEs at the subtask level was unequal.

That said, even if the agency should have assessed an additional weakness to Leidos' proposal, we agree with the agency that BAH cannot establish prejudice. Under the key personnel and project staffing factor (the second most important factor) BAH was assessed one strength, one weakness, and two risks, for an overall rating of good. AR, Tab 14, TEB Report at 12-15. While BAH challenged this weakness, the TEB determined that the weakness was outweighed by BAH's strength. AR, Tab 14, TEB Report at 12 ("The TEB determined that the strength outweighed the weakness, and deemed the risk of unsuccessful performance as low to moderate."). Further, the SSA's comparative assessment raised no concerns regarding the weakness. Rather, the SSA's assessment noted the following:

[BAH's] project staffing plan was of good quality, feasible, and likely to perform requirements well from a technical perspective. The approach addressed both how to retain current employees as well as augment existing staff with qualified candidates. The [g]overnment determined that the proposed LOE solution was sound and appropriate but it had concerns about the anticipated growth and associated [FTE] count as both did not align with the TO objective of increased efficiency.

AR, Tab 15, ADD at 34. Notably, although BAH challenged in its initial protest the risk assessed by the agency for BAH's proposed growth in its LOE, BAH subsequently abandoned that argument.¹⁷ Compare Protest at 33-36 with MOL at 15-17 with Protester's Comments & 2nd Supp. Protest; Supp. AR at 2. See IntelliDyne, LLC, supra, at 3 n.3.

¹⁶ Here, the oral presentations, which included a 90-minute presentation and an oral question and answer session, were not recorded, however, offerors were required to submit their oral presentation slides as part of their written technical proposal submission. TOR at L-11, L-15-L-16; Tr. at 349.

¹⁷ Similarly, as discussed above, BAH did not challenge the second risk assessed by the TEB for BAH's surge staffing approach. We also agree with the agency that BAH has not established that the different evaluation results were not based on differences between the offerors' proposals. See IPKeys Techs., LLC, supra, at 9.

By contrast, Leidos was assessed three strengths and no weaknesses or risks, and an overall rating of excellent. AR, Tab 14, TEB Report at 24-28. Even if the agency should have assessed a weakness to Leidos' proposal for failing to identify FTEs at the subtask level, at best, Leidos' proposal would have been assessed three strengths, one weakness, and no risks, as opposed to the one strength, one weakness, and two risks assessed for BAH's proposal. On this record, we fail to see how BAH was prejudiced by this error.

Evaluation of Leidos' Corporate Experience

BAH argues that GSA's assessment of strengths, as well as its assignment of a rating of good to Leidos under the corporate experience factor, were unreasonable and unequal. As discussed below, we cannot find GSA's evaluation of Leidos' corporate experience to be supported by the record.

Where a protester challenges the evaluation of an offeror's experience, it is not our role to reevaluate submissions; rather, we examine the supporting record to determine whether the decision was reasonable, consistent with the stated evaluation criteria, and adequately documented. Addx Corporation, B-414749 et al., Aug. 28, 2017, 2017 CPD ¶ 275 at 7; ICF Inc., B-407273.17, B-407273.19, Dec. 19, 2013, 2014 CPD ¶ 10 at 6.

The TOR stated that the government would evaluate an offeror's response to the requirements based on the degree the response reflects experience on projects that are "collectively similar in size, scope, and complexity" to the requirements stated in the PWS. TOR at M-4. In this regard, the TOR instructed offerors to identify corporate experience information for three projects performed within the last five years by the business unit that would perform the task order. Id. at L-13-L-14. The TOR also explained that "[c]ollectively similar in scope and complexity is defined as the projects, when taken as a whole, are similar to the requirements identified in [the PWS] Collectively similar in size is defined as the sum of the ceiling values of each proposed [c]orporate [e]xperience project per year is similar to the total ceiling value of each year of this requirement."¹⁸ Id. at L-14.

Leidos identified its incumbent task order providing support to 25th AF, as well as projects with the Joint Improvised-Threat Defeat Agency and U.S. Central Command. AR, Tab 31, Leidos Written Technical Proposal at T-1-T-12. The TEB assessed two strengths and, in assigning an overall rating of good to Leidos under this factor, the TEB determined that Leidos' collective corporate experience met and exceeded the requirements. AR, Tab 14, TEB Report at 28. To support this finding, the TEB noted that the three references identified by Leidos were collectively similar in size, scope,

¹⁸ The solicitation provided as an example "one proposed [c]orporate [e]xperience is similar to the work required in [t]asks 1 and 2, another project that is similar to [t]asks 3-5, and another reflects experience managing a complex multi-agency requirement." TOR at L-14.

and complexity. Specifically, the TEB found that: (1) the size of the projects exceeded the average annual dollar value for the task order; (2) all three projects clearly identified similar experience in all six tasks and major subtasks; and (3) the collective complexity of the projects was similar to the task order because Leidos provided examples of Department of Defense (DoD) multi-tenant requirements, domestic and overseas locations, top secret level clearance requirements, and similar FTE levels. Id.

By contrast, the TEB reached similar conclusions about BAH's corporate experience but assigned a lower rating of acceptable to BAH's proposal. Id. at 16. Specifically, the TEB found that: (1) the size of the projects exceeded the average annual dollar value for the task order; (2) all three projects clearly identified similar experience in all six tasks and major subtasks; and (3) because the collective complexity of the projects were similar to the task order BAH provided examples of DoD multi-tenant requirements, domestic and overseas locations, top secret level clearance requirements, and similar FTE levels. Id.

During the hearing, the TEB chair testified that BAH and Leidos were assigned different ratings because Leidos demonstrated "full knowledge of [the] TOR requirements and demonstrated experience" providing those services while the experiences provided by BAH merely showed that it met the requirements and that BAH's proposal did not "articulate well the full capabilities" or their experience providing those capabilities. Tr. at 368-369. In our view, that testimony is not supported by the contemporaneous record, which, as discussed above, does not support the distinctions made in the TEB's assignment of ratings.

The TEB chair also testified that the TEB determined that Leidos exceeded the requirements based on the multiple strengths identified. Tr. at 364. However, on this record we cannot find that GSA's assessments of these strengths were reasonable. For example, the TEB assessed a strength for Leidos' diversity of experience of having "presented three unique [g]overnment experiences with similar requirements," because they showed "breadth and diversity of experience that would be beneficial to the program. AR, Tab 14, TEB Report at 30. While GSA maintains that diversity was related to complexity, the TEB chair struggled to explain how diversity of experience related to complexity or articulate the benefit of "diversity of experience."¹⁹ Tr. at 366-368.

Similarly, Leidos was assessed another strength because the evaluators "agreed that [Leidos'] [c]orporate [e]xperience examples were highly relevant in scope and

¹⁹ During the hearing the TEB chair testified that in considering complexity, in addition to considering the technical requirements of the PWS, the TEB considered whether the experience was for a "multi-tenant" requirement (multiple recipients receiving services under the contract), as well as for an enterprise (providing services to the organization as a whole including their subsets, as opposed to just providing services to a subset of a larger organization). Tr. at 350-351.

complexity.” AR, Tab 14, TEB Report at 30. While the TEB chair testified that Leidos’ corporate experience exceeded the requirements of the TOR, the TEB chair’s testimony focused primarily on Leidos’ targeting experience, which was only one subtask identified under task 3 (provide analysis and assessment support). Tr. at 365; TOR at C-16-C-18. This testimony, however, is not supported by the contemporaneous record, which merely states that the work performed under two of the three reference projects “was very similar to all six TOR [PWS] tasks” and referenced staffing levels, deployment locations, and clearance requirement. AR, Tab 14, TEB Report at 30. Nonetheless, while we have identified errors in the agency’s evaluation, we find that these errors, at best, show that the evaluation of Leidos and BAH’s proposals under the corporate experience factor--the least important of the non-price factors--should have received equivalent ratings.

Unequal Discussions

BAH next argues that the agency engaged in unequal and improper discussions only with Leidos prior to award. Protester’s Comments & 2nd Supp. Protest at 5-9; Protester’s Supp. Comments & 3rd Supp. Protest at 4-11. GSA responds that it did not conduct discussions; but acknowledges that it negotiated a reduction in fee with Leidos, after it had been selected for award. Supp. AR at 3-4.

It is well-established that, although the regulations concerning discussions in procurements conducted pursuant to FAR part 15 do not, as a general rule, govern task order competitions conducted pursuant to FAR part 16, when an agency engages in exchanges with offerors in task order competitions, such exchanges must be fair and not misleading. See, e.g., Skyline Ultd., Inc., B-416028, B-416028.2, May 22, 2018, 2018 CPD ¶ 192 at 6; AT & T Corp., B-414886 et al., Oct. 5, 2017, 2017 CPD ¶ 330 at 4; Mission Essential Personnel, LLC, B-407474, B-407493, Jan. 7, 2013, 2013 CPD ¶ 22 at 5. Moreover, in a procurement conducted pursuant to FAR subpart 16.5, such as this one, offerors must be treated equally and agencies may not engage in conduct that favors one offeror over another. See, e.g., Pioneering Evolution, LLC, B-412016, B-412016.2, Dec. 8, 2015, 2015 CPD ¶ 385 at 9-10.

The TOR advised that because the acquisition was being conducted under FAR subpart 16.5, the principles and procedures of subpart 15.3 did not apply, and expressly reserved the right to negotiate a final reduced price with an offeror that has been selected for award based upon a best-value determination. TOR at M-1. The TOR stated that the negotiations would include reductions in profit/fee in order to achieve the absolute best value for the government. Id.

Here, the record shows that prior to the finalization and signing of the TEB report and award decision document on March 14 and 15, GSA entered into negotiations with Leidos in February 2019 to obtain a final reduced price. This negotiation resulted in Leidos’ reduction of its award fee and total price to \$903,138,470. AR, Tab 15, ADD at 35-40. In response to BAH’s arguments, GSA explains that prior to GSA’s initiation of fee negotiations, the TEB reached and documented its consensus assessment of

ratings on January 14, 2019. COS at 5; see also AR, Tab 13, Summary of Ratings Letter. GSA also explains that the CO reviewed the TEB's consensus ratings, a draft TEB report, and the cost/price analysis for both offerors, and determined that award to Leidos represented the best value to the government. COS at 5-7; see also AR, Tab 36, Draft TEB Report; AR, Tab 33, Draft ADD. GSA further asserts that the draft TEB report was submitted for quality control and review in January, and to the extent there were any changes between the draft and final TEB report, the changes were not material, or had no prejudicial impact to BAH. 2nd Supp. AR at 2-6.

On this record, BAH's arguments provide no basis to sustain the protest. In support of its protest, BAH relies on our decision in SRA International, Inc., B-410973, B-401973.2, Apr. 8, 2015, 2016 CPD ¶ 32, arguing that GSA could not have made an award decision before the technical evaluation has been finalized. Protester's Supp. Comments & 3rd Supp. Protest at 8. The facts here, however, are distinguishable from those in SRA. For example, in SRA, the record included no documentation of any source selection decision prior to the commencement of discussions. SRA Int'l, Inc., supra at 3. Here, the record shows that prior to initiating fee negotiations with Leidos, the ratings of both offerors had been finalized, the TEB had determined that Leidos' proposal was technically superior to that of BAH, and the SSA had determined and documented that Leidos' proposal--the highest rated and lowest priced proposal--represented the best value to the government. AR, Tab 13, Summary of Ratings Letter; AR, Tab 33, Draft ADD at 33. To the extent that changes were made to the TEB's evaluation, those changes were not material, and they ultimately did not change the relative competitive standing of the offerors. Finally, the contemporaneous record shows that Leidos' proposed cost (\$922,494,581), not the negotiated cost (\$903,138,470), formed the basis for GSA's decision to select Leidos over BAH. AR, Tab 33, Draft ADD at 34. Accordingly, this protest ground is denied.²⁰

Challenges to Cost Evaluation

Finally, BAH argues that GSA's cost realism analysis was flawed because the agency failed to adequately evaluate Leidos' low LOE at the task level. Protester's Comments & 2nd Supp. Protest at 16-17; Protester's Supp. Comments & 3rd Supp. Protest at 23-28. GSA responds that the TEB and the SSA were aware of Leidos' lower proposed LOE for those tasks, but the agency had no concerns regarding the proposed LOE based on the technical approach proposed by Leidos. Supp. AR at 7-11.

A cost realism analysis is an independent review and evaluation of specific elements of an offeror's proposed costs to determine whether the proposed costs are realistic for the work to be performed; reflect a clear understanding of the requirements; and are consistent with the unique methods of performance and materials described in the

²⁰ Nothing in this decision should be read to suggest that our Office would reach the conclusion above in every circumstance where the evaluation and the award decision were not yet finalized.

offeror's technical proposal. FAR § 15.404-1(d)(1). Agencies are required to perform such an analysis when awarding cost-reimbursement contracts to determine the probable cost of performance for each offeror. FAR § 15.404-1(d)(2). An agency is not required to conduct an in-depth cost analysis, see FAR § 15.404-1(d)(1), or to verify each and every item in assessing cost realism; 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. Agencies are given broad discretion to make cost realism evaluations. Tridentis, LLC, B-410202.2, B-410202.3, Feb. 24, 2015, 2015 CPD ¶ 99 at 7. Consequently, our review of an agency's cost realism evaluation is limited to determining whether the cost analysis is reasonably based and not arbitrary. Id.

Here, the TEB conducted an analysis of the LOE proposed by the offerors as part of the agency's evaluation under the key personnel and project staffing factor to determine if the LOE and labor mix were realistic to accomplish the technical requirements of the TOR based on the offerors' proposed solutions. AR, Tab 14, TEB Report at 13-14 (BAH); 25-26 (Leidos). As relevant here, the TEB's analysis compared the proposed LOE per task with the independent government cost estimate (IGCE) and noted that Leidos' proposed LOE for tasks [DELETED], [DELETED], and [DELETED] were lower than the IGCE. AR, Tab 14, TEB Report at 25-26. With regard to task [DELETED], for which Leidos' proposed LOE was [DELETED] percent lower than the IGCE, the TEB found that Leidos provided an explanation for the lower LOE, and as a result, the TEB had no concerns. Id. at 25. However, for tasks [DELETED] and [DELETED], while the TEB observed that Leidos' proposed hours were [DELETED] percent and [DELETED] percent lower than the IGCE, respectively, the TEB Report did not contain any explanation regarding the TEB's lack of concern. Id. at 26.

The CO concurred with the findings of the TEB. Additionally, as part of her cost realism analysis, she conducted her own independent analysis of the proposals and determined that the proposed costs were realistic for the work to be performed, reflected a clear understanding of the requirements, and were consistent with the unique methods of performance and materials described in the technical proposals. However, in her analysis, the CO did not specifically address whether she considered Leidos' proposed LOE for tasks [DELETED] and [DELETED] to be adequate. AR, Tab 15, ADD at 28-33.

During the hearing, the TEB chair explained that the IGCE was developed using historical staffing information, and represented one solution to the requirement. Tr. at 46. By contrast, Leidos proposed a solution utilizing processes and technology that justified a lower LOE. Tr. at 46, 47. The TEB chair testified that for these tasks Leidos proposed a labor mix that utilized more senior personnel when compared to the IGCE. Tr. at 45, 46. The TEB chair also explained that during the TEB's evaluation, the Air Force's subject matter experts (SME) for those tasks reviewed the LOE and did not raise any concerns. Tr. at 102, 106. In this regard, the TEB chair also explained that prior to the TEB's evaluation of the key personnel and project staffing factor, the SMEs for each task had already reviewed the offerors' technical and management approaches to determine the adequacy of the offeror's proposed LOE for each task. Tr. at 103. In

this regard, the TEB chair testified that Leidos' proposal identified processes and the use of technology that the TEB concluded would lead to increased efficiencies, thus justifying a lower LOE for those tasks. Tr. at 37. The CO also testified that while she was aware of the lower LOE proposed for those tasks, however, she determined as part of her cost realism analysis that Leidos' proposed LOE for tasks [DELETED] and [DELETED] were appropriate and did not require any adjustments. Tr. at 478-479. For example, for task [DELETED], the CO testified that Leidos proposed tools that would reduce the need for additional support. Tr. at 479, 519-520.

On this record, we see no basis to object to the agency's consideration of Leidos' proposed LOE for tasks [DELETED] and [DELETED]. The fact that the evaluators did not specifically document why they concluded that Leidos' lower proposed LOE for tasks [DELETED] and [DELETED] did not raise any concerns does not mean that the agency did not consider them. An agency is not required to document all "determinations of adequacy" or explain why a proposal did not receive a strength, weakness, or deficiency for a particular item. Allied Tech. Grp., Inc., B-412434, B-412434.2, Feb. 10, 2016, 2016 CPD ¶ 74 at 13. Here, based on the record before us, we do not find the agency's cost evaluation to be unreasonable.²¹ Accordingly, this allegation is denied.

The protest is denied.

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General Counsel

²¹ BAH also challenges the adequacy of the agency's consideration of a pending internal corporate merger, specifically with regard to the impact of the merger on Leidos' indirect cost rates. Protest at 39-41; Protester's Comments & 2nd Supp. Protest at 21-23; Protester's Supp. Comments & 3rd Supp. Protest at 29-31. The contemporaneous record contains no discussion of this issue, however, during the hearing, the CO explained her conclusion that the merger would have no impact on Leidos' proposed indirect rates. Tr. at 619-625, 629, 639-640. As discussed above, agencies are given broad discretion to make cost realism evaluations and are not required to verify each and every item in assessing cost realism. See Tridentis, LLC, supra; AdvanceMed Corp.; TrustSolutions, LLC, supra; FAR § 15.404-1(d)(1). While BAH disputes the adequacy of the CO's consideration, on this record we have no basis to object to the agency's conclusions. Enterprise Servs., LLC et al., B-415368.2 et al., Jan. 4, 2018, 2018 CPD ¶ 44 at 19; SRA Int'l, Inc.; NTT DATA Servs. Fed. Gov't, Inc., B-413220.4 et al., May 19, 2017, 2017 CPD ¶ 173 at 27 n.34.