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Decision

Matter of: General Dynamics Information Technology, Inc.

File: B-417616.2; B-417616.3; B-417616.4

Date: March 31, 2020

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James J. McCullough, Esq., Michael J. Anstett, Esq., and Katherine L. St. Romain, Esq., Fried, Frank, Harris, Shriver & Jacobson LLP; and J. Scott Hommer, III, Esq., Rebecca E. Pearson, Esq., Emily A. Unnasch, Esq., Christopher G. Griesedieck, Esq., and Taylor A. Hillman, Esq., Venable LLP, for Leidos, Inc., the intervenor.

Colleen A. Eagan, Esq., and Anthony J. Balestreri, Esq., Defense Information Systems Agency, 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. Supplemental protest alleging that agency failed to investigate whether awardee gained an unfair competitive advantage through awardee's retention of a former agency official is dismissed as untimely where it was not filed within 10 days of when protester knew or should have known of its basis of protest.
 2. Protest that the agency engaged in misleading discussions which led the protester to increase its proposed direct labor rates is denied where the protester's contention is not supported by the record, and where the protester made its own independent business judgment regarding how to respond to the agency's identified concern.
 3. Protest that agency's price realism evaluation of the awardee's proposal was inadequate is denied where the record shows that the agency conducted its price realism analysis using applicable price analysis techniques, and with results that were reasonable and consistent with the terms of the solicitation.
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DECISION

General Dynamics Information Technology, Inc. (GDIT), of Falls Church, Virginia, protests the award of a contract to Leidos, Inc., of Reston, Virginia, under request for proposals (RFP) No. HC1028-18-R-0024, issued by the Department of Defense, Defense Information Systems Agency (DISA), for global solutions management – operations (GSM-O II) services. GDIT argues that the agency’s evaluation of offerors’ proposals and resulting award decision were improper.

We dismiss the protest in part and deny the protest in part.

BACKGROUND

DISA is a Department of Defense support agency that provides information technology and communications support to the United States military services, combatant commands, and other individuals and systems that contribute to the nation’s defense. See <https://www.disa.mil/About> (last visited Mar. 20, 2020). Among other things, DISA administers the Department of Defense Information Network/Defense Information System Network (DODIN/DISN), a globally-interconnected, end-to-end set of information capabilities, processes, and personnel needed to collect, process, store, disseminate, and manage information on-demand for warfighters, policymakers, and support personnel. Contracting Officer’s Statement/Memorandum of Law (COS/MOL) at 5; Agency Report (AR), Tab 1, RFP, Performance Work Statement (PWS) at 26. The purpose of the GSM-O II procurement here is to obtain operations and sustainment services for the DODIN/DISN, specifically, “the day-to-day delivery support for telecommunications capabilities, including operating and sustaining the network, defending the network, providing access to new customers, monitoring network health, restoring service (as necessary), and implementing minor adjustments and improvements to existing capabilities.” PWS at 27.

The RFP was issued on October 11, 2018, pursuant to the procedures of Federal Acquisition Regulation (FAR) part 15.¹ RFP at 1; COS/MOL at 3. The solicitation contemplated the award of a single indefinite-delivery, indefinite-quantity (IDIQ) contract--under which various types of fixed-price and cost-reimbursement task orders would be placed--for a 5-year base period with two 2-year options and one 1-year option.² RFP at 2. The RFP also contemplated that Task Order 001 (operation and sustainment of the DODIN/DISN infrastructure) and Task Order 002 (maintenance and repair of the DODIN/DISN infrastructure) would be issued concurrent with IDIQ contract

¹ The RFP was subsequently amended seven times. Unless stated otherwise, all citations are to the final version of the solicitation.

² The RFP included, in addition to the 10-year ordering period, a maximum order amount of \$6.52 billion and a guaranteed minimum of \$5 million. RFP at 2.

award.³ Id. The RFP included a PWS setting forth the scope of contractor requirements for the overarching IDIQ contract, as well as a PWS for each of the first two task orders. PWS at 26-63; COS/MOL at 4.

The RFP established that contract award would be made on a best-value tradeoff basis, based on four evaluation factors in descending order of importance: technical/management, past performance, small business participation, and cost/price. AR, Tab 1X, RFP § M at 1-2. The technical/management factor consisted of five equal subfactors: (1) Task Order 001 (operation and sustainment); (2) Task Order 002 (maintenance and repair); (3) cybersecurity; (4) innovation and optimization; and (5) transition plan. Id. at 2. The technical/management factor was significantly more important than the past performance factor and the small business participation factor, and the noncost/price factors, when combined, were significantly more important than cost/price. Id.

With respect to cost/price, the RFP provided offerors with 97 specific labor categories for each contract performance period (referred to as the GSM-O II Pricing Template). RFP at 4-19; AR, Tab 1Q, RFP attach. L7.3, GSM-O II Pricing Template. The RFP also specified the minimum qualifications for each labor category. AR, Tab 1G, RFP attach. C7, Labor Category Descriptions at 1-27. Offerors were required to submit fully-burdened, firm-fixed-price (FFP) labor rates, with and without profit, for both a government site location and a contractor site location, for each labor category. RFP at 2-19. The RFP also informed offerors that the FFP labor rates, with profit, would serve as “not to exceed” ceiling rates for all FFP-type task orders and/or contract line item numbers (CLIN) under the GSM-O II contract. Id. at 2; AR, Tab 1W, RFP § L at 21-22. Further, the RFP stated that the FFP labor rates, without profit, would serve as the target cost rates for all task orders and CLINs that were other than FFP in type (e.g., fixed-price incentive (firm target) (FPIF), cost-plus-fixed-fee (CPFF)). RFP at 2; RFP § L at 22. For example, RFP Task Orders 001 and 002 each consisted of a FPIF CLIN and a CPFF CLIN, and offerors’ GSM-O II labor rates, without profit, were to serve as target cost rates under these task orders.⁴ COS/MOL at 6.

The RFP also included detailed instructions for calculating an offeror’s total proposed cost/price, which was to be the sum of the GSM-O II Pricing Template, Task Order 001, and Task Order 002. RFP § M at 9. With regard to the GSM-O II Pricing Template, the agency would calculate the proposed price using the offeror’s FFP rates (with profit) for

³ Task Orders 001 and 002 each consisted of a 180-day transition period, a 1-year base period, and four 1-year options.

⁴ Offerors could, however, as part of Task Orders 001 and 002, propose higher rates of fee for CPFF work, and higher rates of profit for FPIF work, than the FFP profit rates included within the GSM-O II Pricing Template. RFP at 2-3. Also, it was the fee and profit rates proposed within Task Orders 001 and 002 that would serve as the contractor’s maximum authorized rates for future CPFF and FPIF work, respectively. Id.; RFP § L at 22.

each labor category multiplied by the government-estimated labor hours for each labor category, which were not provided in the solicitation. Id. With regard to Task Orders 001 and 002, offerors' proposed costs/prices were to be based upon individual determinations of the labor hours, mix, and labor rates (taken from the GSM-O II Pricing Template, without profit) necessary to perform the required work efforts, as well as the proposed fee/profit. Id.; COS/MOL at 8, 70.

Three offerors, including Leidos (the incumbent) and GDIT, submitted proposals by the January 7, 2019, closing date. An agency technical evaluation team evaluated the noncost/price proposals using various adjectival rating schemes that were set forth in the RFP as follows: outstanding, good, acceptable, marginal, or unacceptable for the technical/management factor and small business participation factor; and acceptable or unacceptable for the past performance factor. A separate cost/price evaluation team assessed the cost/price submissions in accordance with the solicitation for both reasonableness and realism. See RFP § M at 10.

The agency conducted discussions, and offerors submitted their final proposal revisions (FPR) by the October 16 closing date. The agency evaluated the FPRs, with the final evaluation ratings and cost/prices of the Leidos and GDIT proposals as follows:

	Leidos	GDIT
Technical/Management⁵		
Task Order 001	Outstanding	Outstanding
Task Order 002	Outstanding	Outstanding
Cybersecurity	Good	Outstanding
Innovation and Optimization	Outstanding	Outstanding
Transition Plan	Outstanding	Good
Past Performance	Acceptable	Acceptable
Small Business Participation	Outstanding	Outstanding
Proposed Cost/Price	\$1,672,467,178	\$1,991,659,475
Evaluated Cost/Price	\$1,672,467,178 Low Risk	\$1,991,659,475 Low Risk

AR, Tab 13, Source Selection Decision Document (SSDD) at 141-142.

The agency evaluators also identified strengths and weaknesses in the proposals in support of the ratings assigned. For example, with regard to the technical/management evaluation of Leidos and GDIT, the agency found 17 strengths and no weaknesses in each offeror's submission. AR, Tab 10A, GDIT Final Technical/Management Evaluation

⁵ Subfactor ratings were not rolled into an overall technical factor rating. RFP § M at 3.

Report at 3-23; Tab 17A, Leidos Final Technical/Management Evaluation Report at 3-24.

On December 2, the agency source selection authority (SSA) found the Leidos and GDIT proposals to be relatively equal under the technical/management factor, “based upon the merit and benefit of the strengths when compared,” as well as being relatively equal under the past performance and small business participation factors. AR, Tab 13, SSDD at 170-171. The SSA thereafter concluded that insofar as the Leidos and GDIT proposals were equal under all noncost/price factors, and Leidos’ proposal was \$320 million, or 19 percent, lower in cost/price, Leidos’ proposal represented the overall best value to the government. Id. at 171-172.

On December 10, DISA provided GDIT with notice of contract award to Leidos together with a written debriefing. AR, Tab 14A, Contract Award Notice; Tab 14B, GDIT Debriefing at 1-27. On December 16, the contracting officer provided GDIT with responses to the offeror’s debriefing questions. AR, Tab 14C, Responses to GDIT Debriefing Questions at 1-7. On December 23, GDIT filed this protest with our Office.

DISCUSSION

GDIT raises various challenges regarding the agency’s evaluation and subsequent award decision. First, the protester contends that the agency failed to properly assess whether Leidos had an unfair competitive advantage. GDIT also alleges the agency’s discussions with it, regarding the company’s proposed direct labor rates, were misleading. GDIT also contends the agency’s price realism evaluation of Leidos was unreasonable. Further, the protester asserts the agency’s technical/management evaluation of GDIT and Leidos was unequal in one particular regard. Lastly, GDIT contends that the agency’s best-value determination was flawed.⁶ We have considered all of the issues raised by GDIT and, although we do not address them all, find no basis on which to sustain the protest.

Alleged Leidos Unfair Competitive Advantage

GDIT contends the agency failed to adequately investigate whether Leidos had an unfair competitive advantage resulting from the awardee’s retention of a former high-ranking DISA official. Specifically, the protester alleges that Leidos retained the consulting services of a former agency official, Mr. X, who was significantly involved

⁶ GDIT initially raised additional challenges to the evaluation of the technical/management proposals, i.e., that the agency failed to recognize various strengths in GDIT’s proposal, and that there were additional instances where the agency’s evaluation was unequal. Protest at 23-35; Supp. Protest and Comments, Jan. 31, 2020, at 39-48. GDIT subsequently elected to withdraw these additional protest grounds. Supp. Protest and Comments, Feb. 18, 2020, at 36 n.24; GDIT Supp. Comments, Mar. 2, 2020, at 23.

with the GSM-O II effort, and therefore provided Leidos with access to non-public, competitively-useful information. The protester also argues that although it alerted the contracting officer about this specific issue prior to the RFP's closing date, the agency failed to adequately investigate whether Leidos' reliance on the former DISA official provided the awardee an unfair competitive advantage and/or violated the Procurement Integrity Act (PIA).⁷ Supp. Protest and Comments, Jan. 31, 2020, at 32-38.

The agency issued the RFP on October 11, 2018, and on November 7, GDIT notified the contracting officer of its PIA concern regarding Mr. X and Leidos. Supp. Protest and Comments, Jan. 31, 2020, exh. I, GDIT Email to Contracting Officer, Nov. 7, 2018. On November 13, the contracting officer informed GDIT that the agency "will ensure the necessary review and appropriate actions are taken in accordance with FAR 3.104 as it relates to Mr. [X] and the GSM-O II solicitation."⁸ Id. The solicitation then closed on January 7, 2019.

On December 10, the agency informed GDIT of the contract award to Leidos, and on December 16, provided GDIT with answers to the offeror's debriefing questions, including as follows:

⁷ The procurement integrity provisions of the Office of Federal Procurement Policy Act (known as the PIA), 41 U.S.C. §§ 2101-2107, provide, among other things, that "[e]xcept as provided by law, a person shall not knowingly obtain contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates." 41 U.S.C. § 2102(b); see also FAR § 3.104. Our Office has recognized that the standard for evaluating whether a firm has an unfair competitive advantage under FAR subpart 3.1 stemming from its hiring of a former government employee is virtually indistinguishable from the standard for evaluating whether a firm has an unfair competitive advantage arising from its unequal access to information as a result of an organizational conflict of interest under FAR subpart 9.5. Northrup Grumman Sys. Corp., B-412278.7, B-412278.8, Oct. 4, 2017, 2017 CPD ¶ 312 at 6.

⁸ The contracting officer subsequently determined that no PIA violation had occurred. AR, Tab 20A, PIA Memorandum Regarding Leidos at 1-3. Also, the record reflects that before the RFP was issued, prospective offerors could inform the agency of potential organizational and consultant conflicts of interest (OCCI) so as to determine their eligibility to compete in the GSM-O II procurement, and both Leidos and GDIT availed themselves of this opportunity. Supp. MOL, Feb. 10, 2020, at 26-27. In particular, Leidos informed the agency of the potential OCCI regarding its retention of Mr. X as well as the firewall it had established to ensure the individual would have no role or interaction with the Leidos' GSM-O II capture team. The contracting officer concluded that Leidos had adequately mitigated any access to nonpublic information that would provide it with an unfair competitive advantage for the GSM-O II procurement. AR, Tab 19A, OCCI Determination of Leidos at 1-5.

Question: As required by [section] L8.4 . . . of the RFP, did the awardee identify required Organizational and Consultant Conflict of Interest (OCCI) information? Did DISA investigate the disclosed OCCI information?

Answer: The Agency evaluated offerors' proposals and made an award decision in accordance with the terms of the RFP. Prior to award, the Agency performed OCCI investigations to ensure any OCCI was adequately mitigated.

Question: While at DISA, did Mr. [X] . . . have access to the GSM-O II acquisition strategy, rate card evaluation model or bidder proprietary data?

Answer: Prior to award, the Agency performed OCCI investigations to ensure any OCCI was adequately mitigated.

AR, Tab 14C, DISA Answers to GDIT Debriefing Questions at 4.

GDIT's protest, filed on December 23, raised various issues regarding the agency's evaluation of the technical and cost/price proposals and resulting award decision. On January 31, 2020, GDIT filed a supplemental protest and alleged for the first time that the agency improperly failed to investigate whether the actions of the former DISA employee provided Leidos an unfair competitive advantage. Supp. Protest and Comments, Jan. 31, 2020, at 32-38.

The agency and intervenor argue that GDIT's protest here is untimely because it was not filed within 10 days of when GDIT knew or should have known of its reason for protest, *i.e.*, the December 10, 2019, contract award notice. Supp. MOL, Feb. 10, 2020, at 26; Leidos' Response to Agency Dismissal Request, Feb. 5, 2020, at 3-5. The protester contends that its protest here is timely because it was filed within 10 days of GDIT learning that the agency had failed to meaningfully consider the unfair competitive advantage issue. Supp. Protest and Comments, Jan. 31, 2020, at 32 n.27. As detailed below, we find the issue here to be untimely raised.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. These rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Logistics Mgmt. Inst., B-417601 et al., Aug. 30, 2019, 2019 CPD ¶ 311 at 14; The MIL Corp., B-297508, B-297508.2, Jan. 26, 2006, 2006 CPD ¶ 34 at 5. Under these rules, a protest based on other than alleged improprieties in a solicitation must be filed no later than 10 days after the protester knew or should have known of the basis for protest, with an exception for protests, as here, that challenge a procurement conducted on the basis of competitive proposals under which a debriefing is requested and, when requested, is required. 4 C.F.R. § 21.2(a)(2). In such cases, protests must be filed not later than 10 days after the date on which the debriefing is held. Id. Additionally, where a protester initially files a timely protest, and later supplements it with new grounds of protest, the later-raised allegations must

independently satisfy our timeliness requirements, since our Regulations do not contemplate piecemeal presentation or development of protest issues. BillSmart Sols., LLC, B-413272.4, B-413272.5, Oct. 23, 2017, 2017 CPD ¶ 325 at 12-13; Planning & Dev. Collaborative Int'l, B-299041, Jan. 24, 2007, 2007 CPD ¶ 28 at 11.

We have also determined that, as a general rule, a protester's allegation that another firm has an unfair competitive advantage, or other conflict of interest, need not be protested until after that firm has been selected for award. Deque Sys., Inc., B-415965.4, June 13, 2018, 2018 CPD ¶ 226 at 5; Manus Med. LLC, B-412331, Jan. 21, 2016, 2016 CPD ¶ 49 at 7; REEP, Inc., B-290688, Sept. 20, 2002, 2002 CPD ¶ 158 at 1-2. This conclusion reflects the underlying principle that a protester is charged with knowledge of the basis for protest at the point where the agency conveys to the protester the agency's intent to follow a course of action adverse to the protester's interests. Manus Med. LLC, *supra*; Guident Techs., Inc., B-405112.3, June 4, 2012, 2012 CPD ¶ 166 at 5. In the context of an alleged unfair competitive advantage, that point typically occurs when the protester is notified of the agency's selection decision.

Here, the record reflects that by December 10, 2019, GDIT was aware of both the facts giving rise to the potential unfair competitive advantage involving Leidos and the agency's decision to make contract award to Leidos. Further, if that by itself was not enough, GDIT was expressly informed on December 16 that "[p]rior to award, the Agency performed OCCI investigations to ensure any OCCI was adequately mitigated." AR, Tab 14C, DISA Answers to GDIT Debriefing Questions at 4. As the award decision fully conveyed to the protester the agency's intent to follow a course of action adverse to the protester's interests, GDIT was required here to file its protest regarding Leidos' unfair competitive advantage within 10 days of the December 16 debriefing. As GDIT instead waited and first raised this issue as part of its January 31, 2020, supplemental protest, we find it to be untimely.

GDIT does not dispute that it was notified of contract award to Leidos on December 10, nor that it was informed on December 16 that DISA had performed an investigation to ensure that any conflict of interest involving Leidos was adequately mitigated. Rather, the protester essentially argues that it "took the Agency at its word," and that it was not until receipt of the January 21, 2020, agency report that GDIT became aware of the lack of documentation to support the agency's assertion. Supp. Protest and Comments, Jan. 31, 2020, at 36-37. We find the protester's timeliness argument meritless.

While the protester contends it was the absence of documents in the agency report that indicated to GDIT that DISA had not properly assessed the alleged Leidos unfair competitive advantage, such documents would, in fact, not have been part of the agency report furnished to our Office--simply because they were not relevant to any of the protest issues that GDIT had then elected to raise in filing its initial protest. See 4 C.F.R. § 21.3(d) ("[t]he [agency] report shall include . . . a copy of all relevant documents . . ."). Moreover, GDIT was fully aware that the agency report was not going to include any documents related to the alleged Leidos unfair competitive

advantage, and never objected to this. Specifically, as required by our Bid Protest Regulations, five days prior to filing its agency report, DISA submitted its response to the protester's request for documents. The response included an index of documents to be produced with the agency report. The protester was clearly on notice from the index of what documents the agency intended or did not intend to produce, yet GDIT chose not to object to the lack of any document production regarding the agency's investigation into any potential PIA or unfair competitive advantage concerning Leidos. Agency Response to GDIT Document Request, Jan. 3, 2020, at 1-7; GDIT Objections to Agency Document Production, Jan. 6, 2020, at 1-8.

In this respect, we agree with the intervenor that GDIT's subsequent attempt to "leverage the fact that the [agency report] does not include [such] information . . . as evidence that DISA failed to evaluate whether Leidos had an unfair competitive advantage or violated the PIA . . . is too-cute-by-half." Leidos' Response to Agency Dismissal Request, Feb. 5, 2020, at 3. In any event, we find that GDIT's allegation here is based on the same core facts as those raised with the contracting officer in November 2018 regarding Leidos' unfair competitive advantage. A conclusion that a protester could, by recharacterizing its protest, file a challenge regarding the agency's substantive review of allegations that the protester failed to timely raise with its initial protest to our Office would render meaningless our timeliness rules at 4 C.F.R. § 21.2(a)(2). Interactive Info. Sols., Inc., B-415126.2 et al., Mar. 22, 2018, 2018 CPD ¶ 115 at 3-4; see Raytheon Co., B-416211 et al., July 10, 2018, 2018 CPD ¶ 262 at 7.

In sum, notwithstanding that GDIT may have been uncertain about the specific contours of the agency's investigation into the alleged Leidos unfair competitive advantage, the protester knew on December 10, 2019, that the agency had definitively taken action adverse to the protester's interests on the basis of the contract award to Leidos. Vistrionix, LLC, B-416916.2, July 29, 2019, 2019 CPD ¶ 268 at 7. Our decisions have repeatedly concluded that a protester need not await perfect knowledge before filing a protest. See, e.g., id.; Valkyrie Enters., LLC, B-414516, June 30, 2017, 2017 CPD ¶ 212 at 3-4 n.2. We therefore conclude that the supplemental protest here is untimely and dismiss all of the protester's arguments concerning Leidos' alleged unfair competitive advantage.

Misleading Discussions

GDIT contends that the agency engaged in misleading discussions with the firm, which forced GDIT to adjust upward its proposed direct labor rates. The protester also alleges that it was competitively prejudiced by the agency's misleading discussions.

The record reflects that when evaluating the realism of the proposed direct labor rates as part of the GSM-O II Pricing Template (as well as Task Orders 001 and 002), the agency evaluators utilized the independent salary survey tool developed by the Economic Research Institute (ERI). COS/MOL at 16; AR, Tab 11A, GDIT Final Cost/Price Evaluation Report at 29. Specifically, for each labor category, the agency looked to see whether the proposed direct labor rate was within 18 percent of the

50th percentile salary for the ERI-comparable labor category (hereinafter, the ERI benchmark).⁹ COS/MOL at 16; AR, Tab 11A, GDIT Final Cost/Price Evaluation Report at 30; Tab 12A, Leidos Final Cost/Price Evaluation Report at 27. Based upon a comparison to its ERI benchmark, the agency identified various direct labor rates within each of the proposals (including that of GDIT) as being unrealistically low. COS/MOL at 16.

After completing its initial evaluation, the agency, through a series of evaluation notices (EN), conducted discussions with offerors regarding the identified weaknesses and deficiencies.¹⁰ Relevant to the protest here, the agency conducted discussions with GDIT on July 25, 2019, regarding its proposed direct labor rates stating, “[t]he Government evaluated proposed direct labor rates, inclusive of prime and subcontractors, for cost realism. . . . The Government notes that the following labor categories appear to be unrealistically low. . . . Please review and provide revised rates, or provide rationale for the proposed rates.” AR, Tab 2A, Discussions with GDIT (July 25, 2019) at 1-3. GDIT responded to the discussions here by providing additional information to demonstrate the realism of its proposed direct labor rates. AR Tab 2B, GDIT Response to Discussions (Aug. 9, 2019) at 5.

On September 11, DISA held further discussions with offerors. With regard to direct labor rates, the agency advised GDIT:

The Government evaluated proposed direct labor rates, inclusive of prime and subcontractors, for cost realism. . . . The Government notes that GDIT's proposed direct labor rates, inclusive of subcontractor direct labor rates, are found to still be unrealistically low for the labor categories identified below by Government Site and Contractor Site. . . . Please review and provide revised rates, or provide rationale for the proposed rates. If sufficient rationale is not provided and/or rates are not revised realistically, the Government will assign the appropriate level of performance risk (for FP [fixed-price]) [in accordance with] FAR 15.404 as part of the Government's total evaluated cost/price and final evaluation.

AR, Tab 4A1, Discussions with GDIT (Sept. 11, 2019) at 1-3. The agency provided essentially the same guidance about direct labor rates to the other offerors during this round of discussions.

⁹ The agency explains that a proposed direct labor rate that was more than 18 percent below the 50th percentile would essentially place the rate in the bottom 10th percentile of the ERI salary range. AR, Tab 11A, GDIT Final Cost/Price Evaluation Report at 29; see also Supp. Protest and Comments, Jan. 31, 2020, at 11, exh. A, Declaration of J. Jackson at 5.

¹⁰ The first round of discussions did not include any items related to offerors' cost/price proposals. COS/MOL at 15-16.

In its response, GDIT stated that it “has reviewed the identified proposed direct labor rates individually and collectively and welcomes the opportunity to provide targeted upward adjustments to specific direct labor rates.” AR, Tab 4B1, GDIT Response to Discussions (Sept. 19, 2019) at 5. GDIT also made upward adjustments to the direct labor rates which the agency had identified as unrealistically low. The agency subsequently conducted a final round of discussions with offerors and, with regard to direct labor rates, employed language identical to the previous round of discussions. See AR, Tab 6B, Discussions with GDIT (Oct. 9, 2019) at 1-2.

After the last round of discussions, the agency cost/price evaluation team subsequently determined that none of the direct labor rates within GDIT’s FPR were unrealistically low. AR, Tab 11A, GDIT Final Cost/ Price Evaluation Report at 34. Consequently, the agency made no cost realism adjustments to the cost-reimbursement aspects of GDIT’s proposal, and found the fixed-price aspects of GDIT’s cost/price to be low risk. Id. at 41.

GDIT argues that the agency’s discussions were misleading because DISA was wrong to inform the firm that its direct labor rates remained unrealistically low after GDIT provided the agency with a detailed justification in support thereof. The protester also maintains that “[u]ltimately, the Agency left GDIT with no choice but to materially raise its proposed labor rates,” in light of the agency’s threat to assign an appropriate level of performance risk if sufficient rationale was not provided and/or rates were not revised realistically. Protest at 13. The agency contends that it accurately conveyed to GDIT the evaluators’ concern regarding the realism of the company’s direct labor rates, and that it was an exercise of GDIT’s independent business judgment regarding how to respond.¹¹ COS/MOL at 45-46; Supp. MOL, Feb. 10, 2020, at 51-52.

It is a fundamental principle of negotiated procurements that discussions, when conducted, must be meaningful; that is, the discussions must be sufficiently detailed and identify the deficiencies and significant weaknesses found in an offeror’s proposal that could reasonably be addressed so as to materially enhance the offeror’s potential for receiving award. FAR § 15.306(d)(3); InfoPro, Inc., B-408642.2, B-408642.3, Dec. 23, 2014, 2015 CPD ¶ 59 at 6; PAI Corp., B-298349, Aug. 18, 2006, 2006 CPD ¶ 124 at 8. Further, an agency may not mislead an offeror--through the framing of a discussion question or a response to a question--into responding in a manner that does not address the agency’s concerns, or misinform the offeror concerning a problem with its proposal or about the government’s requirements. McConnell Jones Lanier & Murphy, LLP, B-409681.3, B-409681.4, Oct. 21, 2015, 2015 CPD ¶ 341 at 5-6; Refinery Assocs. of Texas, Inc., B-410911.2, Mar. 18, 2015, 2015 CPD ¶ 116 at 6.

¹¹ Additionally, the agency points to the fact that almost identical ENs were provided to Leidos during discussions concerning the realism of Leidos’ proposed direct labor rates, and argues that it was left to each individual offeror regarding how to respond. COS/MOL at 43-46.

Based upon our review of the record, we find that the agency's discussions with GDIT were not misleading. As described in detail above, the record demonstrates that, during discussions, the agency accurately raised its evaluation concerns regarding the realism of GDIT's direct labor rates, and then asked GDIT to address the issue which the agency had identified. For example, during the rounds of discussions referenced above, the agency advised GDIT on each occasion that "[t]he Government notes that the following labor categories appear to be unrealistically low. . . . Please review and provide revised rates, or provide rationale for the proposed rates." AR, Tab 2A, Discussions with GDIT (July 25, 2019) at 1-3; Tab 4A1, Discussions with GDIT (Sept. 11, 2019) at 1-3. After receipt of this information, GDIT first elected to provide additional rationale, and ultimately elected to adjust upward its direct labor rates.

Here, GDIT has not established that the information provided by the agency during discussions was inaccurate or communicated in bad faith. We also find no merit in GDIT's assertion that the discussions somehow became misleading when the agency failed to accept as sufficient the offeror's justification for its proposed direct labor rates. As a preliminary matter, there was nothing improper in the agency's raising the same concern in multiple rounds of discussions with GDIT, since the agency was of the view that the identified weakness continued to exist. Zodiac of N Am., B-409084 et al., Jan. 17, 2014, 2014 CPD ¶ 79 at 4; Dynacs Eng'g Co., Inc., B-284234 et al., Mar. 17, 2000, 2000 CPD ¶ 50 at 4. Further, discussions include persuasion, alteration of assumptions and positions, and give and take regarding any aspect of an offeror's proposal. FAR 15.306(d); Dynacs Eng'g Co., Inc., supra. If GDIT was of the view that the agency was mistaken by not accepting its previously-provided justification, it could have offered additional information, or asked the agency questions about its position, rather than "welcoming" the opportunity to raise its direct labor rates. In any event, an offeror cannot reasonably insist that its position is correct, then assent to the agency's point of view, only to reverse course during the protest to argue that the agency was in error not to accept the offeror's initial position.¹²

Additionally, the record reflects that GDIT was neither threatened nor coerced into raising its direct labor rates, but rather, made an independent business judgment about how to respond to the agency's discussion concerns. While an agency may not, in conducting discussions, coerce an offeror into raising its prices or altering any other aspect of its proposal, Serco Inc., B-407797.3, B-407797.4, Nov. 8, 2013, 2013 CPD ¶ 264 at 5, we will not find coercion in discussions where, as here, an agency in good faith provides accurate information to an offeror and leaves it to the offeror's discretion regarding how to respond. See EMR, Inc., B-406625, July 17, 2012, 2012 CPD ¶ 209

¹² We also find GDIT's reliance on our decision in Ranor, Inc., B-255904, Apr. 14, 1994, 94-1 CPD ¶ 258, to be misplaced. In Ranor, we found the agency's discussions regarding the protester's low price to be misleading when the agency abandoned its low-price concern in its award decision. Here, by contrast, the record reflects that the agency never altered its concern for any offeror that direct labor rates below its ERI benchmark were unrealistic, but rather, separately assessed the performance risk associated with unrealistic direct labor rates as part of its award decision.

at 4-5; Academy Facilities Mgmt.--Advisory Opinion, B-401094.3, May 21, 2009, 2009 CPD ¶ 139 at 6.

The language of the discussion item on which GDIT relies (“If sufficient rationale is not provided and/or rates are not revised realistically, the Government will assign the appropriate level of performance risk . . .”) does not support the protester’s argument that it was coerced. The agency did not mandate, or require, that GDIT raise its direct labor rates. Instead, the record shows that GDIT was free to decide how to proceed, so long as the agency’s concerns were addressed in the discussion response. Moreover, the only thing that the agency “threatened” to do, if the offeror’s labor rates were determined to be unrealistic, was to determine the associated level of performance risk --as required by the solicitation. RFP § M at 10 (“[t]he offered prices under FPIF CLINs will not be adjusted, however, may be used in performance risk assessments . . .”). An agency’s discussions are not coercive merely because an offeror makes an independent business judgement that it later regrets. CSC Gov’t Sols. LLC, B-413064, B-413064.2, Aug. 10, 2016, 2016 CPD ¶ 347 at 10-11 n.8; McConnell Jones Lanier & Murphy, LLP, supra, at 6; see also Enterprise Info. Sys., B-401037.5, B-401037.6, Dec. 1, 2009, 2009 CPD ¶ 233 at 2-3.

Price Realism Evaluation of Leidos

GDIT also challenges the adequacy of the agency’s price realism evaluation of Leidos’ proposal. Specifically, the protester alleges that, in various regards, the record is devoid of any meaningful analysis of the risk to performance associated with the fixed-price aspects of Leidos’ proposal. In this regard, the protester focuses on the agency’s determination that even when an aspect of Leidos’ price was considered to be unrealistic, the agency nevertheless concluded that the proposal was low risk. Supp. Protest and Comments, Jan. 31, 2020, at 7-24. For the reasons that follow, we find that DISA’s evaluation was reasonable, adequately documented, and in accordance with the terms of the RFP. Thus, we find no basis on which to sustain the protest.

Where an RFP contemplates the award of a fixed-price contract or task order, price realism is not ordinarily considered, since a fixed-price contract or task order places the risk and responsibility for costs and resulting profit or loss on the contractor. Phacil Inc., B-406628, July 5, 2012, 2012 CPD ¶ 202 at 4. However, an agency may, as it did in the solicitation here, provide for the use of a price realism analysis for the limited purpose of assessing technical understanding or risk.¹³ FAR § 15.404-1(d)(3); M7 Aerospace, LLC, supra, at 6-7; BillSmart Sols., LLC, supra, at 8. The depth of an agency’s price realism analysis is a matter within the sound exercise of the agency’s discretion, and we will not disturb such an analysis unless it lacks a reasonable basis. Apogee Eng’g, LLC, B-414829.2, B-414829.3, Feb. 21, 2019, 2019 CPD ¶ 85 at 8-9;

¹³ In light of the limited purpose of a price realism analysis, there is no requirement that an agency determine whether an offeror’s price includes all of its anticipated costs. M7 Aerospace, LLC, B-415252.4, B-415252.5, Nov. 9, 2018, 2018 CPD ¶ 387 at 7.

Grove Resource Sols, Inc., B-296228, B-296228.2, July 1, 2005, 2005 CPD ¶ 133 at 4-5.

With regard to the cost/price evaluation, the RFP established that both the CPFF and FPIF portions of proposals (i.e., Task Orders 001 and 002) would be evaluated for reasonableness and realism, and that the agency also reserved the right to evaluate the realism of the FFP (i.e., GSM-O II Pricing Template) portion of proposals. RFP § M at 10. Further, “[i]n accordance with FAR 15.404-1(d)(3), results of . . . realism analyses for [fixed-price work] may be used in performance risk assessments and responsibility determinations.” Id.

Leidos submitted its cost/price proposal in accordance with the RFP instructions, and included the required GSM-O II Pricing Template that identified the offeror’s labor rates for each labor category by site location, performance period, and cost element (e.g., direct labor rates, indirect rates, profit). Leidos’ proposal contained similar cost buildup information from the subcontractors it proposed to utilize for the various GSM-O II Pricing Template labor categories. Leidos also submitted its labor categories, labor hours, bases of estimate, and fee/profit for Task Orders 001 and 002. AR, Tab 9A1, Leidos FPR, Vol. V, Cost/Price Proposal at 1-93.

Our review of the record confirms that the agency evaluators used a variety of appropriate cost analysis techniques to support their conclusion that Leidos’ price was generally realistic, and where unrealistic, was nevertheless low risk. AR, Tab 12A, Leidos Final Cost/Price Evaluation Report, at 26-42. Among other things, the agency assessed Leidos’ direct labor rates using the ERI benchmark discussed above; evaluated Leidos’ indirect rates using the offeror’s Defense Contract Management Agency (DCMA) forward pricing rate recommendation (FPRR); and analyzed the mix and levels of Leidos’ labor categories for conformance with the offeror’s proposed technical solution for Task Orders 001 and 002.¹⁴ In this regard, we agree with the agency that its analysis was reasonably performed and adequately documented with a contemporaneous 42-page cost/price evaluation report, together with 22 enclosures. Id. at 1-43.

The crux of GDIT’s argument is that DISA did not meaningfully consider certain aspects of Leidos’ proposed pricing and/or merely accepted at face value the explanations provided by Leidos. In this regard, GDIT also contends the agency did not reasonably judge the risks to performance even where Leidos’ pricing was found to be unrealistic. The protester’s arguments, however, appear to misconstrue the extent and purpose of a price realism evaluation. In light of the limited purpose of a price realism analysis, it is reasonable for an agency to review an offeror’s prices and supporting rationale to confirm that the offeror has a realistic approach to performing the contract and justifies any potential price-related risks. M7 Aerospace, LLC, supra, at 7. We find that the

¹⁴ GDIT raises no challenges to the realism of Leidos’ indirect rates, or Leidos’ labor mix and levels for Task Orders 001 and 002.

agency reasonably considered Leidos' pricing and determined that it did not evidence a material performance risk to the agency. We provide some examples below.

Misapplied Labor Hour Estimates

For example, GDIT argues the agency's price evaluation was flawed as a result of misapplying the government-estimated number of hours to the FFP labor categories contained in the offerors' GSM-O II Pricing Templates. GDIT argues that this error was significant and "cast doubt" on the credibility of the agency's entire cost/price evaluation. Supp. Protest and Comments, Jan. 31, 2020, at 7.

As set forth above, the RFP provided that offerors' GSM-O II Pricing Template prices would be determined by multiplying the proposed FFP rates by the agency's undisclosed labor hour estimates for each labor category. Unbeknownst to the agency evaluators, the listing of labor categories in the GSM-O II Pricing Template was not in the same order as the labor categories in the agency's labor hour estimate table. AR, Tab 23A, Declaration of Cost/Price Analyst, Feb. 10, 2020, at 1-4. As a result of this error, the agency applied labor estimates from the government's undisclosed labor categories to different labor categories in each offeror's pricing template instead of comparing labor estimates from the same labor categories. Id.

The agency acknowledges it made an error in the application of the estimated labor hours to offerors' FFP labor rates within the GSM-O II Pricing Template. Supp. MOL, Feb 10, 2020, at 2. The agency argues, however, that the error here was without prejudice to GDIT because it: (1) made the same error in evaluating both proposals, and the error did not favorably alter the protester's competitive standing; (2) had no impact on how offerors' proposed; and (3) did not affect the reasonableness of the agency's price realism evaluation. Id. at 3-10. We agree.

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. Engility Corp., B-413120.3 et al., Feb. 14, 2017, 2017 CPD ¶ 70 at 17; Lockheed Martin Integrated Sys., Inc., B-408134.3, B-408134.5, July 3, 2013, 2013 CPD ¶ 169 at 8; see Statistica, Inc. v. Christopher, 102 F.3d 1577 (Fed. Cir. 1996).

Here, the record reflects that had the agency applied the correct labor hour estimates to the GSM-O II Pricing Template, the difference between the Leidos and GDIT total evaluated cost/prices would have been greater, not less. AR, Tab 23A, Declaration of Cost/Price Analyst, Feb. 10, 2020, at 3-5. Specifically, while GDIT's total evaluated cost/price would have decreased by \$1.6 million, Leidos' total evaluated price would have decreased by more than \$50 million. Id. This would have increased the overall evaluated cost/price difference between the offerors from \$320 million to more than \$367 million. Id. We fail to see, and GDIT is unable to establish, how this error would

have favorably altered its competitive standing, or the rationality of the SSA's best-value determination.

Further, GDIT fails to show that the misapplication of labor hours to labor categories would have affected how it proposed in any way. As set forth above, offerors were required to provide FFP labor rates for the labor categories in the GSM-O II Pricing Template without knowledge of the labor hour amounts. Quite simply, offerors here did not base their cost and technical submissions upon faulty estimates.

Leidos' Direct Labor Rates

GDIT also alleges, for example, that the agency failed to meaningfully consider the risk to contract performance posed by Leidos' unrealistically low direct labor rates. The protester contends that agency evaluators "bent over backwards" to minimize the impact associated with direct labor rates that had been identified as unrealistically low.¹⁵ Id. at 11. We disagree.

The record reflects that the agency performed a detailed review of Leidos' direct labor rates contained within the GSM-O II Pricing Template. AR, Tab 12A, Leidos Final Cost/Price Evaluation Report at 26. Using its ERI benchmark as a guide, the agency evaluators identified a total of 29 direct labor rates (for both contract and government sites) in Leidos' FPR as unrealistically low, as well as 6 direct labor rates that the agency viewed as too high.¹⁶ Id. at 32.

The agency evaluators then assessed the performance risk associated with Leidos' direct labor rates. Here, the evaluators considered the number of instances where Leidos' rates were found to be unrealistically low--29 out of 194. Id. at 38. The agency also considered the degree to which Leidos' rates were considered unrealistic, and noted that direct labor rates were only slightly outside the government's range for realistic rates--an average of 3 percent for government sites and 6.65 percent for contractor sites. Id. The agency evaluators concluded that the "realism concern and performance risk is minimal and likely mitigated by the offeror's [e]xceptional technical proposal and [a]cceptable past performance." Id.

We find the agency's evaluation here to be unobjectionable. The agency, using the ERI benchmark as a guide, reasonably found various Leidos direct labor rates to be unrealistic. The agency then properly assessed the related performance risk, and

¹⁵ While GDIT argues that Leidos' unrealistically low direct labor rates would also affect the CPFF aspects of Leidos' cost/price proposal, the protester does not allege that any corresponding cost realism adjustment would alter the offerors' relative cost/price standing. Supp. Protest and Comments, Jan. 31, 2020, at 14-15.

¹⁶ As offerors were required to submit both a government-site rate and a contractor-site rate for each of the 97 labor categories in the GSM-O II Pricing Template, there were a total of 194 labor rates in the FFP portion of offerors' proposals.

reasonably considered both the scope and degree of the realism concern. Finally, the agency considered other aspects of Leidos' proposal before reasonably concluding that the risk to performance was minimal. While GDIT argues the agency failed to also consider that the Leidos rates found unrealistic represented more than 26 percent of total labor hours, and took "artificial comfort" in finding that Leidos' rates were slightly outside the realism range, we find this amounts to disagreement with the nature and extent of the agency's price realism assessment, and evaluation judgments, which, without more, does not provide a basis to sustain the protest. Deep Space Sys., Inc., B-417714, Sept. 26, 2019, 2019 CPD ¶ 347 at 5 n.6.

Leidos' Profit Rate

GDIT also alleges that the agency's price realism evaluation of the Leidos proposal failed to meaningfully consider Leidos' low profit rate. In support thereof, GDIT points to the "paltry" [DELETED] percent average profit rate proposed by Leidos for its FFP labor categories within the GSM-O II Pricing Template, and argues the agency failed to acknowledge the risk with Leidos' offer to perform the contract at little or no profit. Supp. Protest and Comments, Jan. 31, 2020, at 17.

As set forth above, offerors were required to submit FFP labor rates, with and without profit, for each of the labor categories contained in the GSM-O II Pricing Template. RFP at 2-19. The RFP also established that FFP labor rates, with profit, would serve as "not to exceed" ceiling rates for all FFP task orders and CLINs under the GSM-O II contract. Id. Further, while offerors' FFP labor rates, without profit, would serve as the target cost rates for all task orders and CLINS that were other than FFP, offerors could, by means of Task Orders 001 and 002, propose higher rates of fee and profit for CPFF work and FPIF work, respectively. Id. It was the fee and profit rates proposed within Task Orders 001 and 002 that would serve as the contractor's maximum authorized rates for future CPFF and FPIF work, respectively. Id.

Leidos, as part of its cost/price proposal, proposed different rates of profit and fee for different parts of its proposal. Specifically, Leidos proposed an average [DELETED] percent profit rate for the FFP labor categories contained in the GSM-O II Pricing Template; an [DELETED] percent CPFF fee for Task Orders 001 and 002; and a [DELETED] percent FPIF profit for Task Order 001 and a [DELETED] percent FPIF profit for Task Order 002. AR, Tab 12A, Leidos Final Cost/Price Evaluation Report at 12. In fact, for the FFP labor rates within the GSM-O II Pricing Template, Leidos' profit rates ranged from [DELETED] percent to [DELETED] percent (e.g., a [DELETED] percent profit rate for Senior Database Specialist), however, Leidos predominately proposed either a [DELETED] percent or [DELETED] percent FFP profit rate. Id.; AR, Tab 9A2, Leidos FPR, Vol. V, Cost/Price Proposal, attach. L7.3, Pricing Template Spreadsheet, Leidos Fee Rates.

The agency evaluators were aware of Leidos' various profit and fee rates, including the [DELETED] percent average rate for the FFP labor categories. Id. at 42. The evaluators also recognized that Leidos' FFP profit rates were "below normal conditions as

presented in the [Government] Weighted Guidelines.” Id. The agency raised this matter in discussions and Leidos explained that it took a comprehensive view of the program, set the profit appropriate to the risk for each labor category, accepted the risk involved with the lower profit rate, and represented that contract performance would not be negatively impacted. Id. The evaluators, while noting the risk associated with Leidos’ proposed FFP profit rates, ultimately concluded that the contract performance risk associated with Leidos’ FFP profit rates was low. Id.

We find the agency’s evaluation here to be reasonable. As a preliminary matter, we note that Leidos’ FFP profit rates were of limited application; they would only be the contractor’s profit rate ceiling for FFP work. As evidenced by Task Orders 001 and 002, the agency contemplated various types of task orders and CLINs other than FFP. In fact, no part of the first two task orders was FFP. It was Leidos’ higher profits rates-- [DELETED] percent for CPFF work and [DELETED] percent to [DELETED] percent for FPIF work--that would be the contractor’s “not to exceed” ceilings for these work types.¹⁷ In fact, if all of the task orders and CLINs issued under the GSM-O II contract were other than FFP ones, then offerors’ FFP profit rates would never become applicable.

Further, the record reflects the agency was aware of and reasonably considered the FFP profit rates being proposed by Leidos. It was the evaluators who determined that while Leidos’ FFP profit rates ranged from [DELETED] to [DELETED] percent, the average of the rates was [DELETED] percent. The evaluators also reasonably considered the fact that the average FFP profit rate was below the government weighted guidelines. The agency also raised this matter with Leidos in discussions and considered the awardee’s response. In sum, the agency considered the potential contract performance risk associated with Leidos’ FFP profit rates and concluded that the risk to performance was low. While GDIT contends that the evaluation here was not a meaningful one, we find this amounts solely to disagreement with the agency’s judgment. Advanced Alliant Sols. Team, LLC, B-410207, B-410207.2, Nov. 18, 2014, 2015 CPD ¶ 4 at 10.

Task Orders 001 and 002

GDIT contends that the agency conducted a flawed realism evaluation regarding Leidos’ proposed staffing of Task Orders 001 and 002 with incumbent personnel. The protester’s argument is essentially as follows: Leidos proposed to use 100 percent of its incumbent workforce to perform Task Order 001 and 002; the agency’s independent government cost estimate (IGCE) is based on the historical labor rates for the incumbent GSM-O contract performed by Leidos; Leidos’ fully-burdened rates for Task Orders 001 and 002 were substantially below the historical rates in the IGCE and would be “woefully inadequate” to retain the incumbent workforce; and the agency’s evaluation

¹⁷ GDIT raises no challenge regarding the agency’s evaluation, or the realism, of Leidos’ higher profit and fee rates within Task Orders 001 and 002. See Supp. Protest and Comments, Jan. 31, 2020, at 17-20.

failed to identify the performance risks associated with Leidos being able to staff Task Orders 001 and 002 as promised at the proposed labor rates. Supp. Protest and Comments, Feb. 18, 2020, at 2-8.

The agency does not dispute that it did not utilize the IGCE as part of its realism evaluation. Rather, the agency contends that insofar as it determined the IGCE to be a flawed and inaccurate reference, it assessed the realism of offerors' direct labor rates by other means. The agency further argues that because GDIT relies entirely upon the inaccurate IGCE as its evidence that Leidos' proposed rates were unrealistic, the protest is founded upon a false premise. As detailed below, we find no basis on which to sustain the protest.

As a preliminary matter, the agency's decision not to use the IGCE as part of its realism evaluation was unobjectionable. Unless the agency commits to a particular evaluation method in the solicitation, the nature and extent of an agency's price realism analysis ultimately are matters within the discretion of the agency. General Dynamics-Ordnance & Tactical Sys., B-401658, B-401658.2, Oct. 26, 2009, 2009 CPD ¶ 217 at 3. We have also found reasonable an agency's realism evaluation where the agency did not utilize its government estimate, as an agency is permitted to employ various types of analyses in determining the realism of an offeror's proposal. McKean Def. Grp., LLC, B-415254.2, Dec. 19, 2017, 2017 CPD ¶ 389 at 4-5; Rollout Sys., LLC, B-414145, Feb. 24, 2017, 2017 CPD ¶ 104 at 7-8. Further, an agency may discount the relevance of its IGCE when the agency reasonably determines the IGCE to be unreliable or otherwise of limited use. The S.M. Stoller Corp., B-400937 et al., Mar. 25, 2009, 2009 CPD ¶ 193 at 16 n.8.

Here, the agency evaluators determined that the IGCE was not a reliable source to be used in its evaluation.¹⁸ Specifically, the agency explains that "the IGCE was developed utilizing predecessor contract information and does not incorporate competitive market forces, process efficiencies, automation of tools, or other alternative technical approaches. Due to these gaps in development, the Price Team chose not to utilize the IGCE in its evaluation" AR, Tab 12A, Leidos Final Cost/Price Evaluation Report at 10 n.1. The GSM-O II procurement also had very different labor categories, in terms of education and experience requirements, than the prior GSM-O contract. AR, Tab 28, Declaration of Cost/Price Analyst, Feb. 24, 2020, at 1-3. Further, GDIT's assertion that Leidos' proposed direct labor rates are unrealistic--and will not permit the awardee to retain the incumbent workforce--is entirely premised on a comparison of proposed rates

¹⁸ GDIT argues that it is not challenging "the agency's use or disuse" of the IGCE. GDIT Supp. Comments, Mar. 2, 2020, at 3. The protester, however, maintains that it is the historical labor rates included in the IGCE--which DISA did not use in its evaluation--that demonstrate the rates proposed by Leidos for Task Orders 001 and 002 are inadequate to retain the incumbent workforce. Id. at 5.

to the IGCE; there is no other information on which the protester bases its claim here.¹⁹ In sum, we find GDIT's comparison of the labor categories in the IGCE to those in Leidos' task orders to be essentially an "apples and oranges" one.

The record also reflects that Leidos' direct labor rates were based on actual salary data. Specifically, Leidos' proposed labor rates were based on its DCMA FPRR, and the FPRR was "generated from [Leidos] employee average actual salary cost data." AR, Tab 9A1, Leidos FPR, Vol. V, Cost/Price Proposal at 67. Accordingly, regardless of whether Leidos' direct labor rates were above or below the ERI threshold used by the agency as part of its evaluation, the fact remains that the proposed rates were based on average salaries of Leidos' actual personnel, including incumbent employees.

Lastly, the agency possessed no information (i.e., "red flags") which it failed to consider that would have indicated Leidos' direct labor rates would be insufficient to staff Task Orders 001 and 002 with its incumbent personnel as proposed. In this regard, the facts here are clearly distinguishable from those in GiaCare & MedTrust JV, LLC, B-407966.4, Nov. 2, 2016, 2016 CPD ¶ 321, upon which GDIT relies. In GiaCare, the awardee proposed to retain the incumbent workforce--at rates above incumbent rates--but its price proposal indicated rates for various labor categories below those of the incumbent. The agency, which was aware of the incumbent labor rates, failed to consider this discrepancy as part of its evaluation. We therefore found the price realism evaluation to be unreasonable in light of the agency's failure to consider conflicting information which it possessed. Id. at 9-10. Here, by contrast, there was simply no reliable information which the agency possessed evidencing that the awardee's price was unrealistic in light of its proposed technical approach.

In sum, we find no merit in GDIT's contention that the agency neglected to assess the viability of Leidos' alleged plan to significantly reduce direct labor rates as compared to the predecessor GSM-O contract, because the agency reasonably concluded that its IGCE, and the historical information upon which it was based, would not provide a reliable basis to assess future costs.

Best-Value Tradeoff Analysis

Finally, GDIT argues that the agency's best-value determination is flawed because of the underlying errors in the evaluation (e.g., the price realism evaluation of Leidos). Supp. Protest and Comments, Jan. 31, 2020, at 55-59. Because we have dismissed or denied the protester's challenges to the agency's evaluation, or because GDIT has withdrawn its challenges to the agency's evaluation, we conclude that there is also no basis to challenge the agency's resulting best-value determination. Procentrix, Inc., B-414629, B-414629.2, Aug. 4, 2017, 2017 CPD ¶ 255 at 15. Where, as here, the lower priced of two technically equal offers is selected for award, a tradeoff is not

¹⁹ We also note that GDIT's review of the fully-burdened rates between Leidos' task orders and the IGCE assumes identical overhead and profit rates when trying to assess the similarity or difference in direct labor rates.

required. The MIL Corp., supra, at 14; Weber Cafeteria Servs., Inc., B-290085.2, June 17, 2002, 2002 CPD ¶ 99 at 6.

The protest is dismissed in part and denied in part.

Thomas H. Armstrong
General Counsel