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## Decision

**Matter of:** PAE Aviation and Technical Services, LLC

**File:** B-417704.7; B-417704.8

**Date:** June 8, 2021

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Kenneth Kilgour, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protester's contention that the awardee's proposal contained a material misrepresentation that should have caused the agency to find the proposal ineligible for award is denied where the record does not support a finding that any error in the proposal was material, was relied on by the agency, or had a significant impact on the evaluation.
  2. Challenges to the agency's evaluation of the technical and cost/price proposals are denied where the evaluations were reasonable and consistent with procurement regulations and the solicitation.
  3. Protest that the agency failed to give meaningful consideration to a corporate transaction involving the awardee is denied where the record provides no basis on which to find that the transaction will have a significant impact on cost or contract performance.
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### DECISION

PAE Aviation and Technical Services, LLC, of Arlington, Virginia, protests the award of a contract to DynCorp International LLC, of Fort Worth, Texas, under request for proposals (RFP) No. 70B02C18R00000063, issued by the Department of Homeland Security, United States Customs and Border Protection (CBP), for national aviation logistics and support. PAE asserts that DynCorp's proposal contained a material misrepresentation, that DynCorp failed to inform CBP of a corporate transaction

involving DynCorp, and that CBP unreasonably evaluated offerors' technical and cost proposals.

We deny the protest.

## BACKGROUND

The agency has a diverse fleet of aircraft necessary to accomplish its mission of border protection. CBP requires aircraft maintenance and logistics support to ensure its aircraft are available where and when required. Agency Report (AR), Tab 5, RFP at 7. The solicitation contemplated the award of a single hybrid (fixed-price and cost-plus-incentive-fee) contract with a 12-month base period, nine 1-year options, and a 6-month option to extend services. *Id.* at 30, 44. Award was to be made to the offeror whose proposal was most advantageous to the government, considering--in relative order of importance--the following four factors: maintenance technical, safety, past performance, and price/cost.<sup>1</sup> *Id.* at 88, 94-95. The maintenance technical factor was significantly more important than the safety and past performance factors; the three non-cost/price factors, when combined, were significantly more important than cost/price. *Id.* at 95.

The RFP required the following six key employees for contract performance: program manager, site manager, supply supervisor, chief of quality control, maintenance supervisor, and information technology Maximo chief. *Id.* at 46. Under the maintenance technical factor, offerors were to provide resumes for these key personnel and "outline their plan to ensure proposed positions are fully staffed at contract start." *Id.* at 88. The RFP did not require offerors to identify the current employment status of proposed employees. *See id.*

Under the safety factor, the agency would evaluate the contractor's approach to ensuring the highest levels of flight safety are maintained. *Id.* at 89. Specifically, the

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<sup>1</sup> This procurement has been the subject of several previous GAO protests. On May 31, 2019, CBP made the first contract award to DynCorp. PAE Aviation and Technical Services, LLC, and Vertex Aerospace, LLC, protested that award with this Office. GAO dismissed both protests as academic after the agency notified GAO of its intent to re-evaluate proposals and make a new award decision. *See PAE Aviation and Tech. Servs., LLC*, B-417704, July 12, 2019 (unpublished decision); *Vertex Aerospace, LLC*, B-417704.2, July 12, 2019 (unpublished decision). PAE and Vertex protested the agency's intended corrective action; we dismissed those protests when the agency amended its proposed corrective action. *See PAE Aviation and Tech. Servs., LLC*, B-417704.4, Sept. 9, 2019 (unpublished decision); *Vertex Aerospace, LLC*, B-417704.3, Sept. 9, 2019 (unpublished decision). DynCorp challenged the revised corrective action, and we denied that protest. *DynCorp Int'l LLC*, B-417704.5, Dec. 20, 2019, 2020 CPD ¶ 51. DynCorp challenged the subsequent award to PAE, and we dismissed that protest when the agency took corrective action. *DynCorp Int'l LLC*, B-417704.6, July 15, 2020 (unpublished decision).

RFP advised offerors that the agency would evaluate the offeror's plan to implement an aviation safety management system (SMS) for this contract. The safety factor included these five specific "areas of emphasis": proposed SMS organizational structure, to include specific safety management professional positions; organizational safety training plan; SMS data management plan and existing data processing resources; SMS past experience; and a plan to incorporate the contractor's SMS into the overarching CBP Air and Marine Operations SMS. *Id.*

Under the past performance factor, the evaluation of which PAE does not challenge, the RFP required offerors to identify up to three government or commercial aircraft maintenance contracts, within 5 years of the issuance of the RFP, including the numbers and types of aircraft maintained, readiness levels achieved, and specific operating sites serviced. *Id.* at 89

The agency would evaluate each technical factor separately, identifying significant strengths, strengths, significant weaknesses, weaknesses, and risks. *Id.* at 93. CBP would assign each of the three technical factors a risk rating of low, medium, or high risk. *Id.* Based on the identified strengths, weaknesses, and risks, the agency would assign each of the technical factors a confidence rating of high confidence, confidence, or low confidence. *Id.* at 93-94.

With regard to cost/price, the RFP advised offerors that, "[s]eparately and apart from the technical evaluation, the Government will conduct a cost and/or price evaluation of the offeror's cost/price proposal." *Id.* at 94. The RFP further advised offerors that the agency would conduct a price analysis "to determine if proposed prices accurately and adequately reflect the work to be performed" and would conduct a cost analysis "to determine cost reasonableness and/or cost realism." *Id.*

Under the terms of the RFP, the source selection authority (SSA) had "the right to determine whether two or more technical proposals are 'substantially equal' or whether any differences in technical weighting are 'significant' for the purposes of evaluating the overall merit of proposals." *Id.* at 95. The RFP stated that, in comparing proposals of substantially equal technical merit, price would become a more significant evaluation factor. *Id.* The RFP advised offerors that the agency was not willing to pay significantly more for a minor technical difference, nor was the agency "willing to forego a significant technical difference in exchange for a small price differential." *Id.*

After the earlier award decision, corrective action, and discussions, five offerors--including PAE and DynCorp--submitted final proposal revisions (FPRs) by the due date of December 5, 2019. AR, Tab 98, Business Memorandum at 3-4; Contracting Officer's Statement (COS) at 3.

As a result of the most recent evaluation, the agency assigned PAE's proposal a weakness under the maintenance technical factor. In option years three through nine, PAE proposed 19.52 fewer aircraft mechanic full-time equivalents (FTEs) per year and 2.00 fewer maintenance supervisor FTEs per year than it had proposed for the base

and first two option years. See AR, Tab 90, Technical Evaluation Team (TET) Report (PAE) at 2. In CBP’s view, the protester’s proposal did not explain how efficiencies in contract performance would enable PAE to accomplish the required volume of aircraft maintenance with the proposed reduction in labor hours. *Id.* at 2-3. Based on that single weakness, along with several strengths and significant strengths, the agency evaluated PAE’s proposal as confidence/medium risk under the maintenance technical factor. *Id.* at 1-3.

The agency assigned PAE’s proposal a rating of high confidence/low risk under the safety factor, noting that the proposal had significant strengths under all five elements of the factor. *Id.* at 19-20. According to the TET, the proposal’s significant strengths “provide significant benefits to the Government and demonstrate the Offeror’s understanding of the importance of successfully implementing an aviation-specific SMS for the [Air and Marine Operations] program in a timely manner[.]” *Id.* at 20. The TET assigned DynCorp’s proposal strengths under all five elements of the safety factor and a rating of high confidence/low risk.

The table below summarizes the ratings assigned to DynCorp and PAE’s proposals and includes the offerors’ evaluated prices:

Factor	DynCorp	PAE
Maintenance Technical	High Confidence/Low Risk	Confidence/Medium Risk
Safety	High Confidence/Low Risk	High Confidence/Low Risk
Past Performance	High Confidence/Low Risk	High Confidence/Low Risk
FPR Evaluated Price	\$1,359,767,149	\$1,267,231,623

AR, Tab 98, Business Memorandum at 6.

The SSA reviewed a number of documents, including the TET reports, the cost evaluation team reports, and the final proposals. AR, Tab 95, Source Selection Decision Document (SSDD) at 1. In comparing the proposals of DynCorp and PAE, the SSA noted that, under the maintenance technical factor, DynCorp’s proposal “received multiple significant strengths and strengths with associated benefits in a majority of elements and no weaknesses, while PAE received the weakness discussed above [of failing to substantiate the reasonableness of its reduction in maintenance labor hours in option years].” *Id.* at 31. Under the safety and past performance factors, the source selection authority found that the two proposals “are technically equal.” *Id.* The SSA noted that the three technical factors were significantly more important than cost/price and that DynCorp’s proposal was more highly rated under the most important factor-- maintenance technical. *Id.* Overall, the SSA found DynCorp’s proposal “a better overall value to the Government with significantly more benefits and markedly less risk.” *Id.* Consequently, the SSA found DynCorp’s proposal to be worth “the small price premium” and recommended award to DynCorp. *Id.* at 31, 37. This protest followed.

## DISCUSSION

PAE argues that CBP unreasonably failed to find the awardee's proposal ineligible for award due to a material misrepresentation in the proposal regarding the employment status of two proposed key employees. The protester asserts two additional challenges to the agency's evaluation of technical proposals--that CBP unreasonably assigned PAE's proposal a weakness under the maintenance technical factor and disparately evaluated proposals under the safety factor. PAE contends that the agency's cost evaluation unreasonably adjusted the protester's most probable cost for the cost-reimbursable portion of the contract. Finally, PAE asserts that the agency failed to give meaningful consideration to a corporate transaction involving DynCorp. We discuss each of those allegations and we find that none provides a basis on which to sustain the protest.<sup>2</sup>

### Allegation DynCorp's Proposal Contains a Material Misrepresentation

PAE asserts that DynCorp's proposal contains a material misrepresentation, because the resume for a proposed key person--Mr. S, the supply supervisor--shows Mr. S as being employed by DynCorp, when in fact Mr. S had left DynCorp's employment prior to the submission of final proposals. PAE further asserts that the resume for Mr. C--proposed as DynCorp's Maximo Chief--lists that individual as not being employed, when Mr. C had accepted employment (at an employer other than DynCorp) prior to the submission of final proposals. Comments and Supp. Protest at 3. CBP argues that PAE has not established that Mr. S and Mr. C were no longer available to perform this contract requirement. Supp. Memorandum of Law (MOL) at 2-3.

The issue of whether personnel identified in a proposal or quotation will, in fact, perform under the subsequently-awarded contract or task order is generally a matter of contract administration that our Office does not review. See 4 C.F.R. § 21.5(a); *NetCentrics Corp.*, B-417285.3, June 5, 2019, 2019 CPD ¶ 211 at 3. Nonetheless, we will consider an allegation that a proposal or quotation contains a misrepresentation concerning personnel that materially influences an agency's evaluation. *Id.* A misrepresentation is material where an agency has relied upon the misrepresentation and that misrepresentation likely had a significant impact on the evaluation. *Id.* A requirement to submit a resume for a key personnel position constitutes a material solicitation requirement. *Id.*

Here, there is no dispute that DynCorp's resumes for two proposed key employees contained errors. Mr. S's resume states that he is employed by DynCorp. AR, Tab 67, DynCorp Technical Proposal at 174. The record, however, shows that Mr. S left DynCorp's employ in April 2019, prior to the submission of FPRs on December 5, 2019. Intervenor's Request for Partial Dismissal, exh. A, Decl. of Mr. S at ¶ 5; COS at 3. Likewise, the resume that DynCorp submitted for Mr. C states that he is currently

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<sup>2</sup> While this decision does not discuss all of the issues raised by the parties, we have considered them all and any not directly addressed in this decision are without merit.

unemployed. AR, Tab 67, DynCorp Technical Proposal at 182. A declaration from Mr. C, provided to demonstrate his continued interest in a position on this contract, does not dispute PAE's assertion that he has since accepted employment elsewhere. See Intervenor's Request for Partial Dismissal, exh. B, Decl. of Mr. C.

Notwithstanding these errors in DynCorp's proposal, which PAE characterizes as misrepresentations, the record does not support a finding that the agency relied on the information at issue. The RFP did not require offerors to provide the current employment status of their proposed employees. See RFP at 46, 88, 91. Nor is there evidence that the agency's evaluation relied on the employment status of either individual.

In arguing that the errors had an impact on the evaluation of DynCorp's proposal, PAE asserts that CBP emphasized Mr. S's "current position" at DynCorp when the agency assigned DynCorp's proposal a strength for its proposed key employee. Comments and Supp. Protest at 5 *quoting* AR, Tab 89, TET Report (DynCorp) at 5. The record does not support this assertion. In assigning the strength, the TET noted that "DynCorp proposes highly-qualified key personnel to fill the roles of Program Manager, Supply Supervisor, and Chief of Quality Control who all hold impressive credentials and have extensive experience in their respective roles." AR, Tab 89, TET Report (DynCorp) at 4. Similarly, the source selection decision did not mention, even in passing, the employment status of Mr. S. See AR, Tab 95, SSDD at 10 (noting that "DynCorp received a **strength** for proposing highly qualified key personnel to fill the roles of Program Manager, Supply Supervisor, and Chief of Quality Control, who all hold impressive credentials and have extensive experience in their respective roles.") (emphasis in original). The lone statement in the evaluation record that Mr. S gained some of his extensive experience in his "current position," does not support PAE's assertion that the agency relied upon Mr. S's stated employment with DynCorp in its evaluation.<sup>3</sup>

Lastly, the record also does not support a finding that these errors likely had a significant impact on the evaluation. The agency assigned DynCorp's proposal 3 significant strengths and 13 strengths under the maintenance technical factor. AR, Tab 89, TET Report (DynCorp) at 3-20. PAE challenges the award of only one strength. It is not likely that the agency's assignment of an evaluation rating of high confidence/low risk for that factor would have changed--or that the award decision would have been altered--if CBP had awarded DynCorp's proposal one less strength. While DynCorp's proposal contained the errors cited, and while these errors may have constituted misrepresentations, the record provides no basis to conclude that the erroneous information was relied on by the agency or significantly impacted the evaluation.<sup>4</sup> We thus find this allegation to be without merit.

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<sup>3</sup> Mr. C's proposed resume was not relevant to the assignment of this strength. See *id.*

<sup>4</sup> Moreover, the Intervenor's Request for Partial Dismissal included declarations from both Mr. C and Mr. S describing communications with DynCorp during the procurement.

## Challenge to the Reasonableness of the Weakness Assigned to PAE's Proposal

PAE challenges the agency's assignment of a weakness to its proposal for its reduction in maintenance hours in contract option years. Comments and Supp. Protest at 14. PAE argues that CBP misinterpreted PAE's proposed labor reductions as absolute rather than contingent, and that CBP "should have clarified whether its misinterpretation of PAE's labor proposal was correct before assigning the Weakness[.]" *Id.* at 18. Moreover, PAE argues that the agency disparately evaluated proposals, where CBP assigned the protester's proposal a weakness for too few aircraft mechanics and maintenance supervisors, when PAE proposed more such labor hours than DynCorp proposed. Comments on Supp. AR at 7. CBP contends that its evaluation was reasonable and that PAE's allegation amounts to mere disagreement. MOL at 9.

The evaluation of an offeror's proposal is a matter within the agency's discretion. *HP Enterprise Servs., LLC; Aon Nat'l Flood Servs., B-413967 et al.*, Jan. 17, 2017, 2017 CPD ¶ 26 at 6. In reviewing a protest against an agency's evaluation of proposals, our Office will not reevaluate proposals, but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. *Id.*

Because PAE first contends that CBP misinterpreted its proposed labor reductions as "absolute rather than contingent," we consider, in context, the protester's proposed reductions. PAE's proposal stated:

[DELETED].

AR, Tab 71, PAE Cost/Price Proposal at 7 (emphasis added).

We think the agency reasonably interpreted PAE's proposal as stating that the protester's proposed technical approach would result in efficiencies, and that those efficiencies would enable reductions in maintenance hours in contract option years. Conversely, a reasonable reading of the proposal does not support PAE's contention that the proposed reductions in maintenance hours were contingent on the realization of the expected efficiencies. Where, as here, the protester's asserted interpretation is not readily apparent from the face of the protester's proposal, we have no basis to question the agency's evaluation when it is based on a reasonable

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See Intervenor's Request for Partial Dismissal. The intervenor argues that Mr. S reaffirmed his availability to return to DynCorp and that Mr. C reaffirmed his interest and availability to perform as a key person on the contract. *Id.*, exhs. A and B, Decls. of Mr. S and Mr. C. DynCorp also provided a declaration from a Senior Vice President affirming that, consistent with representations in its proposal, both individuals had verbally committed to perform as key personnel on the contract. *Id.*, exh. C, Decl. of Amentum Senior Vice President. CBP asserts that the record shows that both Mr. C and Mr. S remain available to perform in their proposed roles on the contract and that DynCorp did not misrepresent their availability in its proposal. Supp. MOL at 3.

reading of the proposal. See *DLT Solutions, Inc.*, B-412237 *et al.*, Jan. 11, 2016, 2016 CPD ¶ 19 at 8 (noting that the protester has the burden of submitting a well-written proposal).

PAE also argues that the agency should have requested clarification regarding whether the proposed reduction in labor hours was contingent or absolute. As CBP notes, an agency is permitted, but not required, to engage in clarifications. MOL at 11, *citing* Federal Acquisition Regulation (FAR) 15.306(a); see also *Mission Essential, LLC*, B-418767, Aug. 31, 2020, 2020 CPD ¶ 281 at 8, (noting that agencies have broad discretion as to whether to seek clarifications from offerors, and offerors have no right to clarifications regarding their proposals). PAE has not asserted that CBP was required to engage in clarifications with the protester, and such an assertion would be unsupported by the FAR and prior decisions of this Office.

Lastly, PAE contends that the agency disparately evaluated proposals, where PAE's proposal was assigned a weakness for too few maintenance hours, even though PAE proposed more maintenance and maintenance supervisor hours than DynCorp.

When a protester alleges unequal treatment, the protester must demonstrate that the difference in the evaluation was not the result of differences in the offerors' proposals. *Metro Prods. Gov't Servs., LLC*, B-416203, B-416203.2, July 6, 2018, 2018 CPD ¶ 234 at 8-9 (noting that protester failed to substantiate allegation of unequal treatment; although awardee proposed fewer labor hours than protester, awardee also proposed a different technical approach that would nevertheless enable it to satisfactorily perform the contract).

DynCorp and PAE proposed different technical approaches, with different labor mixes, to satisfy the RFP's requirements. CBP argues that DynCorp proposed to keep staffing constant throughout performance of the contract. Supp. MOL at 5, *citing* AR, Tab 67, DynCorp Technical Proposal at pdf 138-145. The agency contends that DynCorp's proposal "provided a convincing and detailed rationale to support their workforce [full-time equivalent] calculations based on a 'comprehensive estimating approach' including analysis and comparison with DynCorp staffing on similar requirements that the TET found resulted in a 'strong workforce template.'" Supp. MOL at 5, *quoting* AR, Tab 89, TET Report (DynCorp) at 6-7.

In contrast, the agency argues that only PAE proposed a decrease in staffing in the contract's option years. Supp. MOL at 6. The agency argues that PAE's proposal "did not have excess capacity in its maintenance personnel (e.g., aircraft mechanics) that could be readily cut from the contract without affecting the ability to meet requirements and, ultimately mission readiness." *Id.* In the agency's view, PAE's proposal failed to properly support how planned efficiencies would reduce the need for maintenance personnel. *Id.*, *citing* AR, Tab 90, TET Report (PAE) at 8 (noting that PAE "does not explain how these changes will enable PAE to reduce its aircraft



mechanics by 19.52 [full-time equivalents] and 2.00 maintenance supervisors in the out years[.]”).

Despite the difference in the number of proposed personnel, the different technical proposals of PAE and DynCorp render meaningless the kind of apples to oranges comparison that PAE claims demonstrates disparate treatment. Rather, CBP asserts that the protester’s proposal failed to persuade the agency that PAE would realize its forecasted efficiencies during the option years and would thus be able to satisfactorily perform the contract with fewer maintenance personnel. PAE has not demonstrated that the agency’s evaluation was unreasonable, and we therefore find the challenge to the assignment of this weakness to be without merit.

#### Evaluation of Proposals Under Safety Factor

PAE argues that CBP failed to explain why the most recent evaluation of proposals under the safety factor was inconsistent with earlier evaluations. Comments and Supp. Protest at 35. The protester also contends that the agency failed to properly differentiate between proposals “regarding Safety risk[.]” *Id.* The agency contends that it is not unreasonable for a reevaluation after corrective action to differ from the prior evaluation. MOL at 20. The agency also asserts that the record reveals “little difference in the benefits to the agency” between the two proposals under the safety factor. Supp. MOL at 15. We address both challenges to the agency’s evaluation of proposals under the safety factor and find that they lack merit.

Our Office has consistently stated that the fact that an agency’s reevaluation varies from an original evaluation does not constitute evidence that the reevaluation was unreasonable. *Mancon, LLC*, B-417571.5, May 12, 2020, 2020 CPD ¶ 169 at 8. To the contrary, we consider it implicit that a reevaluation could result in different findings and conclusions. *Id.* The overriding concern for our review is not whether the evaluation results are consistent with the earlier evaluation results, but whether they reasonably reflect the relative merit of the offers. *Id.* A protester’s disagreement with the agency’s judgment is insufficient to establish that an evaluation was improper. *Id.*

PAE notes that “CBP had twice previously determined in prior evaluations that PAE had an advantage for Factor 2, Safety, the second most important non-price Factor, but this advantage disappeared without explanation in this latest round of reevaluation.” Comments and Supp. Protest at 35. As noted above, our concern is not whether evaluation results are consistent with earlier findings, but whether they reflect the relative merit of proposals. Here, PAE’s bare allegation that the agency’s evaluation findings have changed provides no basis on which to sustain the protest; we next consider the reasonableness of the current evaluation.

Our Office has found that where the record demonstrates that the SSA was aware of the relative advantages and disadvantages of each proposal, reasonable determinations that proposals are essentially equal are well within the SSA’s discretion. *MicroHealth, LLC*, B-418461.6, B-418461.16, Feb. 17, 2021, 2021 CPD ¶ 140 at 8. An

SSA retains this discretion even if, under an evaluation factor, one proposal has several more strengths than another proposal, where the record shows that the SSA looked behind the adjectival ratings to meaningfully consider the differences--and similarities--between proposals. *North South Consulting Grp., LLC*, B-416849, Dec. 7, 2018, 2019 CPD ¶ 3 at 6-7; *see also Criterion Sys., Inc.*, B-416553, B-416553.2, Oct. 2, 2018, 2018 CPD ¶ 345 at 10 (finding that a source selection official reasonably found quotations were essentially equal in merit, notwithstanding that the agency evaluated one quotation higher under one of three technical evaluation factors); *New Directions Techs., Inc.*, B-412703.2, B-412703.3, Aug. 18, 2016, 2016 CPD ¶ 241 at 8-9 (finding that a selection official reasonably concluded that two proposals were of essentially equal merit even though the agency assigned the protester’s proposal an additional significant strength).

The record reflects that the SSA considered the strengths and significant strengths the agency assigned both proposals under the safety factor. See AR, Tab 95, SSDD at 16-17 (discussing the five strengths assigned to DynCorp’s proposal) and 21-22 (discussing the five significant strengths assigned to PAE’s proposal). Those significant strengths and strengths dealt largely with the offerors’ proposed safety management systems, *see id.*, which reflected the importance the RFP placed on those systems. See RFP at 89 (noting that, under the safety factor, the CBP will “evaluate the offeror’s plan to implement an Aviation Safety Management System (SMS) for this contract[.]”).

The SSA explained that the continuing development of the Air and Marine Operations safety management system influenced the finding that “the two offerors proposed similarly beneficial approaches under Factor 2 [the safety factor][.]” AR, Tab 4, Source Selection Authority’s Statement of Facts at 2. Although the agency evaluated the systems proposed by both offerors as high confidence/low risk, the SSA explained that Air and Marine Operations intends to provide the contractor a government-developed solution--the Air and Marine Operations Safety Management System Portal. *Id.* The contracting officer argues that “the [safety management system] solution presented by PAE has less benefit to CBP than previously assessed because, rather than being more reliant on the contractor’s [safety management system] as was the case in the past, [Air and Marine Operations] would provide the [Air and Marine Operations safety management system] portal to the contractor under the new contract.” MOL at 32-33.

The agency also argues that a side-by-side comparison of the two proposals under the safety factor reveals “little difference in the benefits to the agency” between the two proposals. Supp. MOL at 15. For example, CBP offered this comparison of the agency’s evaluation of PAE’s and DynCorp’s structure for the organization of the safety management system:

Benefit of PAE’s Proposal	Benefit of DynCorp’s Proposal
“PAE’s detailed organizational structure reflects a clear understanding of the importance of safety to the execution of	“DynCorp’s detailed organizational structure reflects a clear understanding of the importance of safety to the execution

<p>aircraft maintenance across the entire organization, and <i>will be effective at overseeing the SMS program across diverse geographic locations with disparate aircraft at each [Aviation Operational Site]</i>, thereby minimizing potential schedule delays by ensuring decisions can be executed in a timely manner.”</p>	<p>of aircraft maintenance across the entire organization. <i>This approach will be effective at overseeing the SMS program across diverse geographic locations with disparate aircraft at each [Aviation Operational Site].”</i></p>
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Supp. MOL at 15-16, *quoting* AR, Tab 95, SSDD at 16 and 22. CBP provides similar comparisons for all five of the elements under the safety factor to support the reasonableness of the SSA’s finding of equal merit to the proposals under the safety factor. See Supp. MOL at 15-17.

PAE did not provide a detailed response to the agency’s defense of its evaluation, except to assert that the SSA “fails to address the meaningful differences in DynCorp’s and PAE’s safety proposals[.]” Comments and Supp. Protest at 38. In fact, as discussed above, the agency provided a robust defense of the reasonableness of its evaluation. Reasonable determinations that proposals are essentially equal are within a SSA’s discretion. *MicroHealth, LLC, supra*. Under the terms of the RFP, the SSA had “the right to determine whether two or more technical proposals are ‘substantially equal’ or whether any differences in technical weighting are “significant” for the purposes of evaluating the overall merit of proposals.” RFP at 95. Here, the SSA concluded that the proposals of PAE and DynCorp were essentially equal under the safety factor. PAE has not demonstrated that conclusion was unreasonable, and we therefore find this allegation to be without merit.

Challenge to the Evaluation of PAE’s Proposed Cost/Price

PAE challenges the agency’s evaluation of the protester’s cost proposal as arbitrary and capricious. Comments and Supp. Protest at 26. The protester contends that CBP improperly rejected PAE’s proposed escalation rates, replacing them instead with standard escalation rates that overstated PAE’s most probable cost by at least \$[DELETED]. *Id.*

When an agency evaluates proposals for the award of a cost-reimbursement contract (or a contract that includes cost-reimbursable line items), an offeror’s proposed costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual, allowable costs. *Logistics Mgmt. Inst., B-417601 et al., Aug. 30, 2019, 2019 CPD ¶ 311 at 6*. Therefore, an agency must perform a cost realism analysis to determine the extent to which an offeror’s proposed costs are realistic for the work to be performed. *Id.* at 6-7; see also FAR 15.404-1(d)(1). We review an agency’s cost realism analysis only to determine whether it was reasonably based and not arbitrary. *Logistics Mgmt. Inst., supra.* at 7.

CBP argues that the RFP advised offerors that the government would evaluate proposed escalation rates for reasonableness and required offerors to explain any proposed escalation rates that were below historical wage escalation levels or any unique circumstances involving the proposed escalation rates. Supp. MOL at 11, *citing* AR, Tab 65, RFP amend. A0012 (Question and Answer) at 1. The agency contends that it reasonably rejected as unrealistically low the escalation rate for non-exempt labor proposed by PAE.<sup>5</sup> Supp. MOL at 11. CBP asserts that, by proposing an escalation rate of 0.0 percent for non-exempt labor over the life of the contract, PAE's proposal assumed that the cost of non-exempt labor would not change over the contract's full period of performance. *Id.* The agency argues that the lack of escalation in non-exempt labor rates "ignores the reality of regular [area wage determination] labor rate adjustments and wage increases associated with [collective bargaining agreement] updates." *Id.* The agency notes that under the collective bargaining agreement that just expired, "wages predictably increased over 3.0% per year." MOL at 28.

The protester withdrew part of its challenge to the agency's cost evaluation, "acknowledge[ing] that the Agency has the discretion to apply a different escalation to estimate the total price of the contract after [area award determinations] and [collective bargaining agreement] renewals." Comments on Supp. AR at 12. Nevertheless, PAE contends it was unreasonable for the agency to "adjust[ ] the escalation assumptions for every other element in each offeror's proposal[.]" *Id.* at 13.

As PAE notes, the agency treated each offeror's proposal the same, and PAE has not argued that the agency's comparable treatment of proposals disproportionately harmed PAE. More important, every assertion of prejudice by the protester--including each calculation of the error in CBP's adjustment of PAE's most probable cost--includes the area wage determination and collective bargaining agreement escalations that PAE now concedes are reasonable. See Protest at 38-39 (calculation of inappropriate adjustment to most probable cost includes labor rate increases); Comments and Supp. Protest at 27 (same). Competitive prejudice is an essential element of a viable protest, and where a protester fails to demonstrate prejudice, our Office will not sustain the protest. *Engility Corp.*, B-413120.3 *et al.*, Feb. 14, 2017, 2017 CPD ¶ 70 at 17. Because PAE has not explained how it was prejudiced by the agency's adjustment of PAE's proposed costs--exclusive of the escalation of non-exempt labor rates, we find no basis upon which to sustain this argument.

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<sup>5</sup> The agency and the protester disagree about whether the RFP permitted unique escalation rates for each option year. Because, as explained below, we find reasonable the agency's conclusion that PAE's escalation rates were unrealistically low, we need not resolve the issue of whether the RFP permitted unique, yearly escalation rates.

## Effect of Corporate Transaction on Agency Evaluation

During the course of this procurement, Amentum Government Services Holdings LLC acquired all of the outstanding shares of DynCorp's parent company, DefCo Holdings, Inc.<sup>6</sup> PAE argues that DynCorp failed in its duty to disclose the corporate transaction to CBP, and that, "in light of the transaction," CBP's "analysis of DynCorp's proposal" contained "deficiencies." Comments and Supp. Protest at 6. PAE contends that it "needs only demonstrate that CBP failed to conduct an adequate analysis of the potential impacts" from the sale of DynCorp, as explained in our decisions in *Wyle Laboratories* and *Lockheed Martin Integrated Systems, Inc.-Recon.*<sup>7</sup> Comments and Supp. Protest at 8.

Our protest decisions regarding matters of corporate status and restructuring are highly fact-specific, and turn largely on the individual circumstances of the proposed transactions and timing. *Lockheed Martin Integrated Sys., Inc.-Recon., supra* at 5; *IBM U.S. Fed., a division of IBM Corp.; Presidio Networked Sols., Inc., B-409806 et al.*, Aug. 15, 2014, 2014 CPD ¶ 241 at 22. We have noted that where a corporate acquisition or restructuring does not appear likely to have a significant impact on cost or technical impact on contract performance, and the offering entity remains intact and retains the same resources reflected in its proposal, the subsequent acquisition of that offeror does not render the agency's evaluation and award decision improper. *Enterprise Servs., LLC et al., B-415368.2 et al.*, Jan. 4, 2018, 2018 CPD ¶ 44 at 19. Conversely, where an offeror's proposal represents that it will perform the contract in a

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<sup>6</sup> DynCorp explains that as a result of this transaction, DefCo and all of its corporate subsidiaries--including DynCorp--became wholly owned subsidiaries of Amentum. Intervenor's Comments at 25. Amentum then merged DynCorp's former parent holding companies--not including DynCorp--into Amentum Services, Inc., resulting in Amentum Services, Inc. becoming the immediate parent company of DynCorp. DynCorp argues that these transactions "resulted merely in a change in ownership of DynCorp--Amentum became the ultimate parent company rather than DefCo." *Id.* DynCorp contends this stock exchange did not impact DynCorp's corporate resources or its status as its own corporate entity. Moreover, DynCorp argues that its proposal "does not identify or rely on any higher-tier corporate resources, and all of its proposed resources remain available to the company." *Id.*

<sup>7</sup> In *Wyle Laboratories*, our Office sustained a protest because an agency failed to consider the impact of an impending corporate transaction on the awardee's proposal, where the record reflected that the awardee advised the agency during discussions of the upcoming transaction and the transaction could have had a material effect on performance. *Wyle Labs., Inc., B-408112.2*, Dec. 27, 2013, 2014 CPD ¶ 16 at 11. In *Lockheed Martin Integrated Systems, Inc.*, we denied a request that we reconsider our decision denying a challenge to the agency's decision to exclude the protester's proposal from award consideration because of the unknown risks resulting from a corporate transaction. *Lockheed Martin Integrated Sys., Inc.-Recon., B-410189.7*, Aug. 10, 2017, 2017 CPD ¶ 258 at 4.

manner materially different from the offeror's actual intent, an award based on such a proposal cannot stand, since both the offeror's representations, and the agency's reliance on such, have an adverse impact on the integrity of the procurement process. *FCi Fed., Inc.*, B-408558.7, B-408558.8, Aug. 5, 2015, 2015 CPD ¶ 245 at 7, *citing Wyle Labs., Inc.*, *supra* at 8.

The contracting officer provided the following account of how CBP became aware of the corporate transaction, and how the agency reacted to it. COS at 4. After the SSA concurred with the recommendation of award to DynCorp, and while the agency was performing a responsibility determination of the awardee, CBP learned through Defense News and Business Wire news articles that DynCorp had been acquired by Amentum. *Id.* The agency reports that DynCorp had not provided notice of this acquisition during the evaluation process. *Id.* CBP's procurement team "noticed that [DynCorp] was still registered in the System for Award Management (SAM) with the same Data Universal Numbering System (DUNS) number and Cage code" and that, "[a]ccording to the Federal Awardee Performance and Integrity System (FAPIS), [DynCorp]'s immediate owner is Amentum Services, Inc." *Id.* CBP concluded that DynCorp was "continuing operations as a separate entity and there was no indication that this new ownership changes [DynCorp]'s corporate structure or will have an impact on its ability to perform as proposed." *Id.* The contracting officer reports that the Corrective Action Business Memorandum documents this information. *Id.*, *citing* AR, Tab 98, Corrective Action Business Memorandum at 4-5.

PAE does not assert that DynCorp's proposal inaccurately reflects the resources available to the awardee to perform the contract.<sup>8</sup> See Comments and Supp. Protest at 10-15. Instead, the protester argues that CBP's "meager inquiry failed to address the fact that CBP's cost realism analysis of DynCorp's proposal *without the transaction* is no longer valid." *Id.* at 10 (emphasis in original). PAE argues that the RFP required CBP to assess DynCorp's most probable cost, and that the agency "appears not to recognize that the transaction will *automatically* trigger an increase to DynCorp's [most probable cost]." *Id.* (emphasis in original). As one example, the protester argues that DynCorp will be required to include Amentum home office cost allocations in its indirect rates, but DynCorp's proposal and CBP's most probable cost analysis do not take those costs into account. *Id.*

DynCorp disputes PAE's claim that the transaction will trigger an automatic increase in DynCorp's most probable cost. Intervenor's Comments on Supp. AR at 15. DynCorp contends that, while it "will receive a special allocation as an Intermediate Home Office of Amentum, that change did not require any accounting changes, did not result in any

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<sup>8</sup> Moreover, the record provides no basis for such an assertion. As the intervenor explained, "there was no change impacting DynCorp's proposal, its proposed technical approach, or the corporate identity of DynCorp the offeror." Intervenor's Comments on Supp. AR at 10. DynCorp contends, without challenge from PAE, that nowhere in DynCorp's proposal did the awardee propose to use any resource of its former parent holding companies that might no longer be available after the Amentum acquisition. *Id.*

changes in DynCorp's forward pricing rates, and will actually reduce DynCorp's overall costs, not increase them." *Id.*, exh. A, Decl. of Amentum Vice President, Government Finance & Compliance at 2. The Amentum Vice President explains that "[b]ecause the special allocation [from Amentum] is substantially lower than the costs it will replace ["certain costs DynCorp incurred prior to the transaction"], the net impact of this change for the Government will be a reduction in DynCorp's indirect costs of approximately \$[DELETED] in 2021." *Id.* The record provides no support for the protester's contention that Amentum's acquisition of DynCorp will lead to an increase in DynCorp's most probable cost on this contract.

Here, the purchase of DynCorp does not appear likely to have a significant impact on cost or any technical impact on contract performance; DynCorp remained intact and retains the same resources reflected in its proposal. DynCorp has provided evidence that its new owner expects DynCorp's indirect costs to decrease, not increase. Because the record provides no basis to find that the transaction will have a significant impact on contract performance--cost or technical--we find this allegation to be without merit.

The protest is denied.

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