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Decision

Matter of: Technology, Automation & Management, Inc.

File: B-418063.3; B-418063.4

Date: October 2, 2020

Kenneth D. Brody, Esq., and Thomas K. David, Esq., David, Brody & Dondershine, LLP, for the protester.

Thomas M. Dunlap, Esq., Dunlap Bennett Ludwig PLLC, for KSJ & Associates, Inc., the intervenor.

Angie Calloway, Esq., General Services Administration, for the agency.

John Sorrenti, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency unreasonably evaluated quotations under a technical factor is denied where the record shows that the evaluation was reasonable and consistent with the solicitation.
 2. Protest challenging agency's price realism evaluation is denied where record shows that the agency's evaluation was adequate, reasonable, and consistent with the solicitation.
 3. Protest alleging that awardee has an unequal access to information organizational conflict of interest is denied where the record shows that the agency meaningfully considered the alleged conflict and reasonably concluded that the awardee did not have an organizational conflict of interest.
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DECISION

Technology, Automation & Management, Inc. (TeAM), of Fairfax, Virginia, protests the issuance of a task order to KSJ & Associates, Inc. (KSJ), of Falls Church, Virginia, under request for quotations (RFQ) No. ID07180067, issued by the General Services Administration, Federal Acquisition Services, for program and technical management services to support the Defense Health Agency (DHA). TeAM raises multiple challenges to the agency's evaluation of quotations and source selection decision, including that the agency's technical and price realism evaluations were flawed, KSJ

has an unequal access to information organizational conflict of interest (OCI), and the agency's best-value tradeoff decision was improper.

We deny the protest.

BACKGROUND

The agency issued the RFQ under the procedures of Federal Acquisition Regulation (FAR) subpart 8.4 to vendors holding Federal Supply Schedule (FSS) No. 70 contracts, special item number 132-56, health information technology services. Agency Report (AR), Exh. 8, RFQ at 1.¹ The RFQ sought program and technical management support services, including program management, engineering expertise, administrative support, technical support, operational planning, and execution oversight to support the DHA. *Id.* at 2-3.

The RFQ contemplated the issuance on a best-value tradeoff basis of a fixed-price, level-of-effort task order. *Id.* at 138, 150. The expected period of performance of the awarded task order was a 4-month base period and four 1-year option periods. *Id.* at 54. Quotations would be evaluated in two phases. In phase 1, the agency would first evaluate two factors, past experience and written technical management approach (TMA), then evaluate price. *Id.* at 139. The phase 1 evaluation would identify the most highly rated vendors, which would be invited to submit quotations for phase 2. In phase 2, the agency would evaluate three factors: key personnel, oral TMA, and price. *Id.* at 142-44. The RFQ stated that the non-price evaluation factors were equal in importance, while all non-price factors combined were significantly more important than price. *Id.* at 140.

As relevant to this protest, under the past experience factor, vendors had to provide information for three "past or on-going projects performed or completed within the past (3) years of the date of posting of this solicitation."² *Id.* at 141. Vendors could submit past experience as either a prime contractor or subcontractor, but the RFQ stated that "[p]rime level experience may be given greater consideration than subcontract level

¹ In the agency's report, the RFQ consisted of a single, 156-page PDF that contained the performance work statement (PWS) along with a number of attachments and appendices. See AR, Exh. 8, RFQ. The evaluation criteria and instructions to vendors were included as two of those appendices. Because the PDF was consecutively paginated, for ease of reference, in this decision we refer to this document as the RFQ and cite to the page numbers provided in that document.

² Vendors identified their three past experience references using an information spreadsheet provided with the RFQ. RFQ at 149. The spreadsheet requested specific information about each reference, including contract or task order number; period of performance (separated into base period and option periods); the vendor's role; and a description of the tasks performed. *Id.*, app. C, Past Experience Information Sheet.

experience, depending on the project scope (value, [p]eriod of [p]erformance, and type of work performed and its applicability to the current requirement).” *Id.* The RFQ also provided that two of the past experience references could be from a “key subcontractor.” *Id.* The RFQ defined a key subcontractor as one that “has a key role in the performance of this [t]ask [o]rder” and directed vendors to “make clear in their quote what the role of this (and other) subcontractors will be in the performance of this [t]ask [o]rder.” AR, Exh. 7, RFQ Questions and Answers (Q&As), Question No. B-25 at 7.

The RFQ stated that past experience would be evaluated based on an overall consideration of three elements: similarity in scope, similarity in size, and similarity in duration.³ RFQ at 141-42. As relevant to this protest, the agency received a question asking whether vendors could “include [b]ridge [c]ontract dates or extensions to an original contract reference[] on the [past experience] form?” AR, Exh. 7, RFQ Q&As, Question No. B-8 at 2. The agency responded that “[past experience] references should consist of all [p]eriod of [p]erformance dates exercised under the contract/task order, including options/extensions.” *Id.*

For the price factor, the RFQ identified the specific labor categories and minimum level of effort for each labor category. RFQ at 125. Vendors could not alter the labor categories or the estimated minimum level of effort identified in the RFQ.⁴ *Id.* The RFQ included a pricing spreadsheet that listed the same labor categories from the RFQ, and the number of full-time employees and total hours for each labor category. *Id.*; *see also* RFQ, app. D, Excel Pricing Spreadsheet. Vendors were required to input their fully burdened labor rates into this spreadsheet, which would then automatically calculate the total price for each labor category. *See id.*

The RFQ provided that price would be evaluated separately from the non-price elements, “to determine the fairness and reasonableness of proposed pricing, but also to determine that the offeror understands the work and their ability to perform the [t]ask [o]rder.” RFQ at 144. The RFQ also stated that “[p]rices that are excessively high or low (without sufficient justification) may be considered unrealistic and unreasonable and may receive no further consideration.” *Id.*

The agency received phase 1 quotations from eight vendors, including TeAM and KSJ. Memorandum of Law (MOL) at 2. After evaluating the phase 1 quotations, the agency invited TeAM, KSJ, and two other vendors to participate in phase 2. AR, Exh. 14, Phase 1 Down Select Memo. at 5. The agency conducted an initial phase 2 evaluation,

³ The RFQ defined similar in scope as “a measurable range of operations that include the major requirements of [s]ection 4 of this PWS”; similar in size as “dollar value and/or number of personnel in similar skill sets”; and similar in duration as “any contract period of performance lasting two (2) years or longer.” RFQ at 142.

⁴ While vendors could not alter the labor categories specified in the RFQ, they had to provide a crosswalk that mapped the RFQ labor categories to the labor categories on their FSS contract. RFQ at 147.

then sent discussions letters to all four vendors and requested revised quotations. MOL at 6. The agency documented its evaluation of the revised quotations in an award decision document (ADD), and in September 2019, the agency issued the task order to KSJ. MOL at 6-7; AR, Exh. 23, ADD. TeAM timely protested this award to our Office, alleging that KSJ had an unequal access to information OCI, among other arguments. AR, Exh. 24, Notice of Award; MOL at 2. In response to the protest, the agency took corrective action to conduct an investigation into KSJ's alleged OCI, and we dismissed the protest as academic. MOL at 7.

In December 2019, after finishing its investigation and concluding that KSJ did not have an OCI, the agency again issued the task order to KSJ. *Id.* In January 2020, TeAM protested this decision, alleging that KSJ still had an unequal access to information OCI. MOL at 7. Shortly after TeAM filed its second protest, the contacting officer was transferred to a different branch within the agency and a new contracting officer was appointed.⁵ *Id.* The agency once again took corrective action, and the new contracting officer conducted a supplemental OCI investigation, again determining that KSJ did not have an unequal access to information OCI. *Id.* The new contracting officer also conducted a reevaluation of TeAM's and KSJ's quotations under all the factors in both phases 1 and 2, which he documented in a revised ADD. *Id.* at 8; AR, Exh. 46, Revised ADD. The reevaluation resulted in the following final ratings assigned to TeAM's and KSJ's quotations:

⁵ Each contracting officer also served as the source selection authority (SSA) for this procurement.

Factor	KSJ	TeAM
Past Experience	Acceptable	Acceptable
Written TMA	Excellent ⁶	Very Good
Key Personnel	Excellent	Excellent
Oral TMA	Excellent	Excellent
Price (Original)	\$67,464,194.67	\$71,977,589.87
Price (Adjusted) ⁷	\$75,284,790.67	\$80,592,634.87

AR, Exh. 46, Revised ADD at 38.

In the reevaluation, the contracting officer compared the quotations from KSJ and TeAM under all of the evaluation factors. *Id.* at 38-41. Ultimately, the contracting officer found that “the difference in non-price factors between KSJ and TeAM is minimal, as both vendors have proposed essentially technically equal RFQ non-price responses (with TeAM having some minimal additional merits based upon its two (2) [o]ral TMA significant strengths), [price] becomes more important for the purposes of determining which firm should receive the task order award.” *Id.* at 40. The contracting officer concluded that “[b]ased upon this best value analysis, the [contracting officer] is unable to justify paying an adjusted pricing premium of \$5,307,844.20 for TeAM over the KSJ RFQ response as both responses exceed the [g]overnment requirement, are essentially equal in their technical merits with TeAM possessing slight merit in its [o]ral TMA response, and offer pricing that is fair, reasonable and realistic for the accomplishment of this work.” *Id.* at 41. Accordingly, the contracting officer decided that TeAM’s slight advantage in the oral TMA factor was not worth the additional cost, and selected KSJ as the best value. *Id.*

This protest followed.

⁶ The initial phase 1 evaluation rated KSJ’s quotation as excellent under the written TMA factor. AR, Exh. 13, Phase 1 Tech. Consensus Eval. at 27-28. However, in the phase 1 down select evaluation, the previous contracting officer found that KSJ’s quotation “did not in any way significantly exceed the PWS requirements nor is it notably more advantageous compared to” the other vendors, and revised KSJ’s rating to very good. AR, Exh. 14, Phase 1 Down Select Memo. at 3-4. In the reevaluation, the new contracting officer maintained the excellent rating when comparing KSJ and TeAM, but ultimately found that “the written TMA quotations of KSJ and TeAM [are] essentially technically equal.” AR, Exh. 46, Revised ADD at 39.

⁷ The adjusted price for both vendors included the value of the 6-month extension authorized by FAR clause 52.217-9. RFQ at 144. The agency calculated this value as half of the quoted price for the last option period, and added it to the vendor’s total price.

DISCUSSION

TeAM's protest alleges that the agency (1) unreasonably evaluated both vendors' quotations under the past experience factor; (2) unreasonably evaluated price realism; (3) erroneously concluded that KSJ did not have an unequal access to information OCI; and (4) performed a flawed best-value tradeoff analysis. For the reasons discussed below, we deny TeAM's protest.⁸

Evaluation of the Past Experience Factor

TeAM argues that the agency unreasonably evaluated quotations under the past experience factor. In this regard, TeAM alleges that the agency improperly failed to consider TeAM's interim contract (or what TeAM terms its "bridge" contract) when determining the period of performance of one of its past experience references; failed to award a strength to TeAM for its past experience as a prime contractor; and failed to reject KSJ's quotation as noncompliant where it submitted past experience of a subcontractor that, in TeAM's view, was not a key subcontractor. Comments & Supp. Protest at 22-24, 44-47.

Where, as here, an agency issues an RFQ to FSS contractors under FAR subpart 8.4 and conducts a competition, we will review the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation. *Digital Solutions, Inc.*, B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 3-4; *DEI Consulting*, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2. In reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate the quotations; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. *OPTIMUS Corp.*, B-400777, Jan. 26, 2009, 2009 CPD ¶ 33 at 4. A protester's disagreement with the agency's judgment does not establish that an evaluation was unreasonable. *DEI Consulting, supra*.

As explained above, under the past experience factor, vendors had to identify three past experience references using the information sheet included in the RFQ. Each reference would be evaluated for, among other things, similarity in duration, which the RFQ identified as any contract period of performance lasting two years or longer. RFQ at 142. One of TeAM's past experience references was the incumbent contract, under which TeAM was providing program and technical management services to DHA. AR, Exh. 10, TeAM Quotation, Past Experience Information Sheet. For the period of performance of the incumbent contract, TeAM listed a base period of approximately 2 months, and two option periods of 6 months each, for a total period of performance of approximately 14 months. *Id.* In response to the question of whether the project had

⁸ While our decision does not address every argument raised, we have considered all of TeAM's allegations, and based on our review of the record, we find no basis to sustain the protest.

been ongoing for more than one full year, TeAM stated “[y]es; [w]e are the current [p]rime and the original contract was extended through a bridge that ends 9/21/2019.”⁹ *Id.*

In the reevaluation of quotations conducted after TeAM’s second protest, the agency found that TeAM’s incumbent contract reference failed to meet the 2-year or longer duration requirement. AR, Exh. 46, Revised ADD at 25. The agency concluded that the period of performance consisted only of the base period and two option periods. *Id.* The agency noted that TeAM referenced its so-called bridge contract as a way to increase the overall period of performance for the incumbent contract reference. *Id.* However, the agency did not consider the performance period of the separate sole-source award to TeAM under TeAM’s FSS contract, stating that “this time period was for ‘bridge’ work, which is not evaluated as all vendors were limited to the submission of three (3) [past experience] examples and evaluation of a bridge task order would constitute evaluation of a fourth (4th) [past experience] reference; additionally, TeAM did not provide a dollar value or contract/task order number for this bridge work.” *Id.*

TeAM argues that the agency “improperly refused to consider TeAM’s experience under the bridge contract which extended TeAM’s performance as the incumbent DHA prime contractor.” Comments & Supp. Protest at 23. The agency asserts that its decision not to consider TeAM’s bridge contract was consistent with its response to the RFQ question about whether vendors could include bridge contracts or extensions to an original past experience contract reference. COS at 25; MOL at 11. The agency maintains that the response “specifically stated that only options and extension periods exercised under the contract would be considered in the evaluation of the performance periods of [past experience references] submitted.” MOL at 11. TeAM counters that the agency’s response “did not prohibit the use of bridge contracts as part of a [past experience] reference” and merely advised that the references “‘should’ consist of ‘all [p]eriod of [p]erformance dates’ without excluding bridge contracts.” Comments & Supp. Protest at 18.

Where a dispute exists as to a solicitation’s actual requirements, we begin by examining the plain language of the solicitation. *Point Blank Enters., Inc.*, B-411839, B-411839.2,

⁹ We note that the term “bridge contract” is not defined in the FAR. For the purposes of this decision, there is no dispute in the record that TeAM’s incumbent contract here was a task order issued under the TRICARE Evaluation Analysis and Management Support indefinite-delivery, indefinite-quantity (IDIQ) contract, managed by the Defense Contract Management Agency/Medical Command. Contracting Officer’s Statement (COS) at 25; MOL at 13. In contrast, the extension of TeAM’s services under the incumbent contract was made using a separate contract instrument--*i.e.*, a sole-source award under the General Services Administration’s FSS No. IT-70 contract. *See id.* Hence, the protester’s underlying premise that its so-called bridge contract was an extension of its incumbent contract blurs the distinction between the incumbent task order contract as initially awarded under the TRICARE IDIQ, and the sole-source FSS task order issued to extend TeAM’s obligation to provide the services at issue in this dispute.

Nov. 4, 2015, 2015 CPD ¶ 345 at 4. We resolve questions of solicitation interpretation by reading the solicitation as a whole and in a manner that gives effect to all provisions; to be reasonable, and therefore valid, an interpretation must be consistent with such a reading. *Desbuild Inc.*, B-413613.2, Jan. 13, 2017, 2017 CPD ¶ 23 at 5. If the solicitation language is unambiguous, our inquiry ceases. *Id.* at 6; *Pond Constructors, Inc.*, B-418403, Mar. 23, 2020, 2020 CPD ¶ 129 at 6. Based on the plain meaning of the question and answer at issue here, we agree with the agency’s interpretation.

As noted above, the agency received the following question about the RFQ, and provided the following response:

Question: Can the [g]overnment clarify if we can include [b]ridge [c]ontract dates or extensions to an original contract reference[] on the [past experience] form?”

Response: [Past experience] references should consist of all [p]eriod of [p]erformance dates exercised under the contract/task order, including options/extensions.

AR, Exh. 7, RFQ Q&As, Question No. B-8 at 2. In our view, the question asked whether a vendor could include the dates of performance of either a bridge contract or an extension when calculating the total period of performance for an existing past experience reference. In this regard, the agency’s response limited vendors to the use of extensions or options to calculate their period of performance for a reference. The agency did not authorize the use of separate and distinct contracts--issued to bridge a gap in services arising from the expiration of other contracts--when calculating the period of performance of a contract reference. While we recognize that the FSS task order TeAM calls its bridge contract may require the same or similar scope of work as the original contract reference, if the agency intended for vendors to include the dates of this type of contract in the period of performance, the response could have stated this.¹⁰

TeAM argues that the response “directly addressed the use of bridge contract dates . . . by clearly affirming that offerors could use ‘all [p]eriod of [p]erformance dates’, which plainly includes the ‘bridge contract dates’ and extensions of bridge contract dates.” Supp. Comments at 7. We find that this interpretation misconstrues the response. While a vendor could use as a past experience reference a bridge contract, and include any extensions or options for that bridge contract to determine the period of performance, that bridge contract would have to be submitted as a separate past experience reference, and could not be used to extend the period of performance of an existing reference to a different contract.

¹⁰ Consistent with this interpretation, we note that the past experience information sheet requested vendors to provide the period of performance of a particular past experience and included fields for the base and option periods, but not for a separate “bridge contract.” AR, Exh. 10, TeAM Quotation, Past Experience Information Sheet.

Based on the agency's response, the agency concluded that the use of what TeAM labels its bridge contract would "constitute evaluation of a fourth past experience reference" (*i.e.*, TeAM's sole-source FSS task order), which could not be used to extend the period of performance of TeAM's reference to its incumbent task order (*i.e.*, TeAM's task order under the TRICARE IDIQ). In this context, the agency argues that TeAM's so-called bridge contract "is not an exercised option or extension under a contract/task order." COS at 25. Rather, the instrument TeAM identifies as a bridge contract is instead a "separate procurement action" awarded with a "separate contract/task order number."¹¹ *Id.* On this record, we find that in omitting the term "bridge contract" in its response to the question, the agency informed vendors that only options or extensions of a referenced contract--and not other separate contracts placed to bridge a gap in services--would be considered when determining the period of performance of a particular contract or task order identified as a past experience reference. Accordingly, we find reasonable, and consistent with the solicitation, the agency's decision not to consider TeAM's so-called bridge contract as an extension of its initial IDIQ task order, and we deny this protest ground.¹²

TeAM next alleges that the agency failed to award a strength to TeAM for its past experience as a prime contractor. Comments & Supp. Protest at 12-14. The agency's evaluation included the following passage:

[A] '[s]trength' is defined as '[a]n aspect of a quote that, when judged against a stated evaluation criterion, enhances the merit of the quote or

¹¹ TeAM also argues that the agency treated the protester and KSJ unequally by considering a KSJ "bridge contract" in determining the period of performance of a KSJ contract reference. Despite TeAM's argument, the record shows that the agency treated TeAM and KSJ equally regarding this issue. The agency's phase 1 evaluation of KSJ's quotation considered KSJ's use of a so-called bridge contract for one of its past experience references (as was first done with TeAM's quotation), and assessed a strength to KSJ's quotation for submitting three past experience references that were longer than 2 years. AR, Exh. 13, Phase 1 Technical Consensus at 30-31. However, in the reevaluation conducted by the new contracting officer after TeAM's second protest, the agency stated that it did not consider KSJ's bridge contract for the same reason it did not consider TeAM's bridge contract, *i.e.*, because it would constitute evaluation of a fourth past experience reference. AR Exh. 46, Revised ADD at 6.

¹² TeAM also argues that the agency's discussions were misleading because the agency failed to reopen discussions to inform TeAM that it would not consider TeAM's so-called bridge contract under the past experience factor, and unequal because the agency did inform KSJ about issues (not related to bridge contracts) with KSJ's past experience references. Comments & Supp. Protest at 37-44. Because we find that the RFQ notified vendors that only options and extensions to the referenced contract itself would be used to determine the period of performance of a particular past experience reference, the agency had no obligation to reopen discussions to inform TeAM that the agency was not considering this reference. As a result, TeAM's allegation that the discussions were not meaningful and unequal is denied.

increases the probability of successful performance of the task order.’ The only aspect of the evaluation of [past experience] that enhances the merit of TeAM’s quote and increases the probability of successful performance is the aspect of the similarity in scope of TeAM’s three (3) [past experience] examples. Also, TeAM demonstrated similar experience as a prime contractor which was considered favorably and enhances the merit. The similarity in size and duration aspects, based on the assessment performed, merely meet the requirement and neither enhance nor decrease the merit of TeAM’s quote, nor increase or decrease the probability of successful performance of the task.

AR, Exh. 46, Revised ADD at 25-26. TeAM asserts that the agency’s finding that “TeAM demonstrated similar experience as a prime contractor which was considered favorably and enhances the merit” should have been considered another, separate strength under the past experience factor. Comments & Supp. Protest at 12-13. TeAM maintains that this finding is the “textbook definition of a [s]trength.” *Id.* at 22. Finally, TeAM contends that a strength would also be consistent with the RFQ, which encouraged prime contractor experience. *Id.*

Based on our review of the record, we find the agency’s decision not to assess another strength to TeAM’s quotation was reasonable. As noted in the agency’s evaluation, a strength was defined as “an aspect of a quote that, when judged against a stated evaluation criterion, enhances the merit of the quote or increases the probability of successful performance of the task order.” AR, Exh. 46, Revised ADD at 25. With respect to prime contractor past experience, the relevant stated evaluation criterion was that “[p]rime level experience may be given greater consideration than subcontract level experience, depending on the project scope (value, [p]eriod of [p]erformance, and type of work performed and its applicability to the current requirement).”¹³ RFQ at 141. Thus, the RFQ explained that whether greater consideration would be given to prime level experience was contingent on the scope of that experience.

Here, after noting that the similarity in scope of TeAM’s three past experience references merited a strength, the agency’s evaluation stated that TeAM’s experience as a prime contractor also “enhances the merit.” AR, Exh. 46, Revised ADD at 26. However, the agency then explained that “[t]he similarity in size and duration aspects, based on the assessment performed, merely meet the requirement and neither enhance nor decrease the merit of TeAM’s quote, nor increase or decrease the probability of successful performance of the task.” *Id.* Indeed, the evaluation shows that one of TeAM’s two prime contractor past experience references failed to meet the definitions of similar in size and duration.¹⁴ *Id.* at 24-25. Given the definition of a strength, the

¹³ As noted above, vendors could identify past experiences on which they performed either as a prime contractor or a subcontractor. RFQ at 141.

¹⁴ With respect to size, one prime contractor past experience reference had an annual value of only \$1.3 million with a maximum of 23 full-time employees in any one period of

relevant stated evaluation criterion, and the findings that one of the two prime contract references did not meet the definitions for similar in size and duration, we find it reasonable that the agency did not assess a separate strength to TeAM's quotation for its prime level experience.

Moreover, in its best-value determination, the agency explained that "TeAM's additional prime level experience is given slight advantage over KSJ but this advantage is considered minimal and not enough to distinguish TeAM's submission over KSJ's submission." *Id.* at 39. Thus, even if the agency had assessed a separate strength to TeAM's quotation that may have resulted in a higher adjectival rating for this factor, the record indicates that the agency did not consider TeAM's additional prime level experience to be a distinguishable advantage over KSJ. See *LOUI Consulting Group*, B-413703.9, Aug. 28, 2017, 2017 CPD ¶ 277 at 5-6 (evaluation of quotations and assignment of adjectival ratings should generally not be based upon a simple count of strengths but on a qualitative assessment of the quotations). Based on our review of the record, we find the agency's evaluation was reasonable and deny this protest ground.

Finally, TeAM argues that KSJ's quotation should have been eliminated as noncompliant because one of its past experience references was for a contract performed by a subcontractor, [DELETED], that KSJ's quotation did not show was a key subcontractor. Comments & Supp. Protest at 44-47. The agency counters that KSJ's quotation showed that [DELETED] met the definition of a key subcontractor and therefore KSJ properly submitted a past experience reference from that company. Supp. COS at 6-9; MOL at 6-9.

As noted above, the RFQ stated that vendors could submit up to two past experience references from a "key subcontractor." RFQ at 141. The RFQ defined a key subcontractor as one that "has a key role in the performance of this [t]ask [o]rder," and directed vendors to "make clear in their quote what the role of this (and other) subcontractors will be in the performance of this [t]ask [o]rder." AR, Exh. 7, RFQ Q&As, Question No. B-25 at 7.

KSJ submitted a past experience reference for work performed by [DELETED], one of its subcontractors. AR, Exh. 21, KSJ Quotation, Revised Past Experience Information Sheet. The cover letter to KSJ's quotation stated that "[t]eam KSJ includes a large multi-national commercial based firm, [DELETED], who provides reach back to short-term project staff." AR, Exh. 11, KSJ Quotation, Cover Letter at 1. The cover letter also included a chart that listed KSJ's seven subcontractors and identified the expected

performance, where the definition of similar in size was a contract value over \$10 million per year and greater than 40 full-time employees per year. AR, Exh. 46, Revised ADD at 24. With respect to duration, the same past experience reference lasted less than one year, where the definition of similar in duration was 2 years or longer. *Id.* at 24-25.

percentage of participation for each subcontractor; [DELETED]'s expected percentage of participation was 10 percent.¹⁵ *Id.* at 2.

TeAM contends that KSJ's quotation does not make clear that [DELETED] performs a key role for the task order. Comments & Supp. Protest at 45. TeAM argues that [DELETED] is just one of seven subcontractors, has a participation rate of only 10 percent, is not providing any of the 12 key personnel for KSJ, and is responsible only for providing "reach back to short-term project staff." *Id.* TeAM also contends that "there is no indication that the [a]gency ever evaluated whether or not [DELETED] was a key subcontractor or documented any rational basis for determining that [DELETED] qualified as a key subcontractor." *Id.* at 46.

The agency counters that the RFQ allowed the agency broad discretion to determine whether a company was a "key subcontractor" and that the agency reasonably determined that [DELETED] met this standard. Supp. MOL at 8. In this regard, the agency notes that KSJ's quotation stated that it would use subcontractors for 46 percent of the work and that [DELETED] is the "second most significant subcontractor" at 10 percent of the work, while the remaining subcontractors would each perform no more than 5 percent of the work. *Id.* at 6; Supp. COS at 7. The agency argues that [DELETED] would provide 10 percent of the staffing and that "[p]roviding quality staffing as needed to fill vacancies quickly and providing any additional staffing as needed to meet project requirements are significant roles under this type of task order that calls for the provisioning of skilled innovative and integrated resources that support the administrative, programmatic, and technical service portfolios." Supp. COS at 8.

The agency also states that "[t]he ability to maintain highly qualified staffing levels and staff support that spans multiple portfolios, divisions and branches requires a contractor to have the ability to provide the most qualified staff and to have a ready reserve of staff [to] replace departing staff in little to no time" and that [DELETED] will provide such support. *Id.* Finally, the agency contends that although the evaluation documents did not contain a discussion regarding whether [DELETED] is a key subcontractor, the contracting officer has provided a "detailed rationale" for determining that [DELETED] is a key subcontractor that is "credible and consistent with the record." Supp. MOL at 8-9.

Based on our review of the record, we find KSJ's use, and the agency's acceptance, of [DELETED]'s past experience reference to be unobjectionable. The RFQ's definition of a key subcontractor as one that "plays a key role in performance of the task order" provided the agency with discretion to determine what would constitute a key role. Here, as the agency argues, [DELETED] would provide the second highest level of participation of subcontractors in KSJ's performance of this task order. Moreover, the agency has explained the importance of a vendor's ability to provide and maintain quality staffing on this task order. KSJ's quotation explains that [DELETED] would

¹⁵ The same chart showed that another subcontractor had an expected level of participation of 18 percent; the remaining 5 subcontractors had levels of participation of 5 percent or less. AR, Exh. 11, KSJ Quotation, Cover Letter at 2.

support this ability by providing short-term project staff. We therefore find it reasonable for the agency to consider [DELETED] to be a key subcontractor.

In addition, while the contemporaneous evaluation does not contain a discussion about whether [DELETED] is a key subcontractor, we find that the explanation provided by the contracting officer in response to TeAM's protest is credible and consistent with the RFQ and underlying evaluation. The agency's explanation relies on statements from KSJ's quotation, and while TeAM disputes the importance of those statements, its disagreement with the agency on this issue does not provide a reason to sustain the protest.¹⁶

The Agency's Price Realism Evaluation

TeAM contends that the agency unreasonably determined that KSJ's price was realistic, and improperly failed to analyze KSJ's technical approach as part of its realism assessment. Comments & Supp. Protest at 27-30. The agency responds that it conducted a reasonable price analysis that was consistent with the RFQ and supported by the record.

Where a solicitation contemplates the award of a fixed-price contract, an agency may provide in the solicitation for the use of a price realism analysis for the purpose of measuring a vendor's understanding of the requirements. *Ball Aerospace & Techs. Corp.*, B-402148, Jan. 25, 2010, 2010 CPD ¶ 37 at 8. Analyzing whether an offeror's fixed price is so low that it reflects a lack of understanding of solicitation requirements is the crux of a price realism evaluation. See *Science Applications Int'l Corp.*, B-407105, B-407105.2, Nov. 1, 2012, 2012 CPD ¶ 310 at 10; *NJVC, LLC*, B-410035, B-410035.2, Oct. 15, 2014, 2014 CPD ¶ 307 at 8. The nature and extent of an agency's price realism analysis are matters within the agency's discretion. *Star Mountain, Inc.*, B-285883, Oct. 25, 2000, 2000 CPD ¶ 189 at 6. Our review of a price realism analysis is limited to determining whether it was reasonable and consistent with the terms of the solicitation. *Smiths Detection, Inc.; Am. Sci. & Eng'g, Inc.*, B-402168.4 *et al.*, Feb. 9, 2011, 2011 CPD ¶ 39 at 17; *Epic Sys., Inc.*, B-418104, B-418104.2, Jan. 2, 2020, 2020 CPD ¶ 1 at 6.

Here, the RFQ stated that price would be evaluated separately from the non-price factors to "determine that the offeror understands the work and their ability to perform

¹⁶ Moreover, we find that TeAM cannot show that the failure to include a discussion in the evaluation about whether [DELETED] is a key subcontractor is competitively prejudicial. The agency's explanation in its response is based on KSJ's quotation, and is credible and reasonable; under the circumstances, we conclude that there is no reasonable possibility that the failure of the agency to include this discussion in its contemporaneous evaluation was prejudicial to TeAM. *Environmental Chemical Corp.*, B-416166.3 *et al.*, June 12, 2019, 2019 CPD ¶ 217 at 6 n.5 (competitive prejudice is an essential element of a viable protest; where none is shown, we will not sustain a protest).

the [t]ask [o]rder.” RFQ at 144. The RFQ did not specify a particular way that the agency would conduct a price realism analysis, and the record shows that the agency compared the quoted labor rates for each of the labor categories to the independent government cost estimate (IGCE) and a competitive average of all of the labor rates received for each particular labor category. AR, Exh. 23, ADD at 46; AR, Exh. 46, Revised ADD at 21.

For KSJ’s quotation, the agency found that 6, or 18.75 percent, of the labor categories had rates that were below the competitive average. AR, Exh. 46, Revised ADD at 21. The agency concluded that “[b]ased upon the fact that most [labor category] pricing elements (81.25%) are at or above the competitive mean . . . the [contracting officer] does not consider those pricing elements, or the pricing on average, to create risk in the offeror’s ability to fully staff and perform the work required by this effort.”¹⁷ *Id.* The agency concluded that “[r]anges falling below the competitive average between 15% and 35% occur on only six (6) of the positions, representing four (4) labor categories does not increase risk since it does not represent a predominance of positions or [labor categories], is within the IGCE, and does not cause the pricing to be dramatically less than any other competitive proposal since there are also positions and rates that fall above the competitive average, representing an offsetting effect to the pricing as a whole and an expected pricing variability that contributes to a competitive average against which the individual pricing rates are assessed.” *Id.* at 22. We find nothing objectionable about this evaluation approach and TeAM has not shown that the agency’s conclusions are unreasonable.

We also disagree with TeAM’s argument that the agency had to evaluate the vendors’ technical solutions as part of the agency’s realism assessment. As explained above, the RFQ specified the labor categories and the number of full time employees and labor hours for each category. Vendors provided only their fully burdened labor rates for each labor category to calculate total price. In effect, the variables relating to how vendors would calculate their total prices, with the exception of the vendors’ quoted labor rates, were dictated by the terms of the RFQ. Given that the RFQ specified the labor mix and level of effort, thereby making vendors responsible for quoting prices based on their own labor rates, we find that the agency did not need to consider the vendors’ technical approaches and instead reasonably evaluated the quoted rates based on the IGCE and rates proposed by other vendors.

¹⁷ TeAM also argues that KSJ failed to include [DELETED] for its labor rates and that this introduced risk. Comments & Supp. Protest at 29. In its evaluation, the agency noted that the RFQ did not require vendors to [DELETED], and found that KSJ’s [DELETED] “does not appear to introduce risk because the original six (6) of thirty two (32) labor categories below the competitive mean [DELETED], with only two (2) additional labor categories [DELETED].” AR, Exh. 46, Revised ADD at 21. The record thus shows that the agency specifically considered whether the [DELETED] to KSJ’s rates created risk and reasonably concluded that it did not.

The Agency's OCI Investigation

As noted above, in its initial protest, TeAM alleged that KSJ had an unequal access to information OCI. TeAM argued that KSJ had a prime contract with DHA that provided KSJ access to a DHA system called Ektropy, which TeAM alleged contained information about TeAM's incumbent program and technical management DHA contract, including labor categories and labor rates.¹⁸ AR, Exh. 39, OCI Determinations and Findings (D&F), Nov. 22, 2019, at 3. In response to TeAM's protest, the agency took corrective action to conduct an investigation into TeAM's allegations.

According to the agency's investigation, the Ektropy system has six different modules and each module has a module owner that ensures role-based access to the system is maintained.¹⁹ *Id.* at 6. The agency confirmed that under a prime contract that KSJ held with DHA, two KSJ personnel had access only to the people/personnel module. The agency's investigation found that the people/personnel module allows access to information such as "[c]ontractor personnel names, agency status, company they work for, location, workload supervisor, contract they are assigned, [f]unctional [t]itle (not [l]abor [c]ategory) and [i]dentification number." *Id.* at 6-7. The investigation also found that "[t]here is no contract spend plan or labor category rate data accessible within the [p]ersonnel [m]odule," thus, the KSJ employees did not have access to the labor category rates or spend plans for TeAM's incumbent DHA contract. *Id.* at 7.

Based on this investigation, the agency concluded that

KSJ's access to Ektropy's [p]ersonnel [m]odule allows them to ascertain information such as (1) how many employees TeAM has assigned to the current contract, (2) their assigned positions, (3) the names of TeAM's personnel assigned to a contract and (4) their functional role. However, this information could not have provided KSJ with any unfair competitive advantage. The government provided the labor categories and the estimated level of effort and the RFQ expressly forbid offerors from altering the labor categories or the provided level of effort when submitting their quotes. And, the evaluation scheme did not encompass an evaluation of proposed labor categories and/or the estimated level of effort. Since all offerors were required to quote the same labor mix and the same number of hours/[full time employees], KSJ's knowledge about

¹⁸ The agency explains that Ektropy is an information technology solution used across DHA organizations "to support program and portfolio management." COS at 43.

¹⁹ The six modules are: controls module; AFP module (aka taxes, trade, and deals); spend plan module; contracts module; people/personnel module; and positions module. AR, Exh. 39, OCI D&F, Nov. 22, 2019, at 6.

TeAM gained via the [p]ersonnel [m]odule of Ektropy could have not have been helpful in making its proposal more competitive.

Id. Accordingly, the agency determined that KSJ did not have an unequal access to information OCI and that KSJ was therefore eligible for award. *Id.*

TeAM asserts that the agency's finding that KSJ did not have an unequal access to information OCI is unreasonable.²⁰ Comments & Supp. Protest at 30-36. TeAM contends that KSJ's access to Ektropy's people/personnel module "provide[s] all of the information needed for KSJ to recreate (i.e., 'reverse engineer') TeAM's detailed organizational structure on TeAM's current contract--to wit, which staff by name work for a particular [d]irectorate/[d]ivision/[b]ranch/[s]ection, their functional title/primary function, and who supervises their workload." *Id.* at 31. TeAM maintains that this would allow KSJ to identify the nonpublic names of TeAM's key personnel, and from that, KSJ could use publicly available sources such as LinkedIn to "determine the competitiveness of TeAM's incumbent key personnel staff." *Id.* at 32. Because the RFQ required offerors to highlight their personnel and capabilities and qualifications of key personnel, TeAM argues that this information gave KSJ an unfair advantage. See *id.* at 32-36.

The agency counters that the names and positions of the incumbent employees available through Ektropy are publicly available information, and therefore KSJ cannot have an unequal access to information OCI. MOL at 20. In this regard, the agency contends that TeAM has admitted in its protest that its employees "maintain publicly accessible LinkedIn profiles reflecting their employer (TeAM) as well as their positional title, education and experience levels and, in some instances, identification of the program within DHA that they support." COS at 44. The agency also argues that contractor personnel working on government installations wear identification badges that display their name and company and that they must identify themselves as contractors when performing acts that could be construed as official government acts. *Id.* at 45. The agency asserts that contractor personnel often move from one company to another in support of similar projects. *Id.* Thus, the agency maintains that KSJ could have researched publicly available information such as names, positions, or qualifications, via the internet, or by asking TeAM or DHA employees. *Id.*

Subpart 9.5 of the FAR, and decisions of our Office, broadly identify three categories of OCIs: biased ground rules, unequal access to information, and impaired objectivity. *McConnell Jones Lanier & Murphy, LLP*, B-409681.3, B-409681.4, October 21, 2015,

²⁰ As noted above, the agency supplemented its initial OCI investigation when it took corrective action in response to TeAM's second protest alleging that KSJ still had an unequal access to information OCI. That allegation and second investigation focused on KSJ's access to the Program Management Accountability Tool (PMAT), which is the Ektropy predecessor system. AR, Exh. 45, OCI D&F, June 1, 2020, at 1. TeAM's current protest asserts that KSJ's alleged OCI arises from its access to the Ektropy system and not PMAT; accordingly the agency's second OCI investigation is not relevant to the grounds raised in this protest.

2015 CPD ¶ 341 at 13. As relevant here, an unequal access to information OCI exists where a firm has access to nonpublic information, and that information may provide the firm a competitive advantage in a competition for a government contract. *Systems Made Simple, Inc.*, B-412948.2, July 20, 2016, 2016 CPD ¶ 207 at 6. We review the reasonableness of a contracting officer's OCI investigation and, where an agency has given meaningful consideration to whether an OCI exists, we will not substitute our judgment for the agency's, absent clear evidence that the agency's conclusion is unreasonable. *Id.* at 7.

Based on our review of the record, we find that the agency's OCI investigation and conclusion that KSJ did not have an unequal access to information OCI to be reasonable. As noted above, the agency's investigation determined that the information KSJ had access to through the Ektropy system included contractor personnel names, agency status, employer, location, workload supervisor, contract they are assigned, functional title (but not labor category), and identification number. TeAM argues that this information would allow KSJ to "reverse engineer" TeAM's organizational structure under the incumbent contract, and "enable[] KSJ to identify TeAM's eleven [k]ey [p]ersonnel." However, it is not clear from the record, and TeAM has not otherwise shown, how access to a TeAM employee's name and functional title (but not their labor category) equates to knowing that a particular person worked as a key person on the incumbent contract. Moreover, the record does not show that the key personnel positions on the incumbent contract are identical to the key personnel positions for this task order to allow KSJ to identify the specific individuals TeAM quoted as key personnel for this task order.²¹

In addition, as the agency points out, many of the LinkedIn profiles for TeAM's employees contain some of the information that was included in Ektropy. For example, a LinkedIn profile for one TeAM employee states that the employee is a program manager who "[l]eads and manages the [program and technical management] contract for strategic direction." Protest, Exh. G, Key Personnel LinkedIn Profiles, at 1. Another profile states that the employee is a senior program/project manager "for the delivery of [h]ealth [i]nformation [t]echnology . . . services across the Defense Health Agency . . . enterprise." *Id.* at 7. As the agency noted, these profiles also show that a number of

²¹ We note that the RFQ identified four categories of key personnel: contract manager and alternate contract manager; contract division leads; technical subject matter experts; and programmatic subject matter experts. RFQ at 48. The RFQ stated that the roles of contract manager, alternate contract manager, and division leads were not labor categories, but rather assigned points of contact to represent the contractor. *Id.* at 47. In addition, the RFQ provided that offerors had discretion as to which personnel within the labor categories identified by the RFQ would fulfill the roles of key personnel. *Id.* at 47-48. In our view, the fact that the key personnel on this task order do not correspond to specific labor categories, and that the vendor had discretion to choose which person would fulfill which key personnel role, further supports a finding that KSJ could not reverse engineer TeAM's specific key personnel staffing for this task order with the information KSJ had access to in Ektropy.

TeAM employees have also previously worked for other contractors, including KSJ. *See id.* at 6, 11. Thus, as the agency argues, much of the information that was available in Ektropy, such as personnel names, employer, and their functional title, also was available in LinkedIn or by speaking with TeAM employees. Given this, TeAM's protestations that this information is decidedly nonpublic fall flat.

Accordingly, in our view, KSJ's access to the information in Ektropy did not provide it with an unfair competitive advantage, where much of that information was publicly available, and TeAM has not shown that this particular information would have given KSJ specific insight into TeAM's incumbent key personnel. Moreover, the agency's investigation gave meaningful consideration to whether an OCI existed, particularly in the context of this procurement, and reasonably concluded that it did not. This allegation is denied.

Best-Value Determination

Finally, TeAM's argument that the best-value determination was flawed is based on its allegations that the underlying evaluation of the non-price factors was erroneous and unreasonable. Comments & Supp. Protest at 36-37. Because we conclude that the agency's evaluation was reasonable and supported by the record, there is no basis to object to the best-value determination on the grounds raised by TeAM.

Moreover, the record shows that the contracting officer provided a well-reasoned basis for his conclusion that both vendors were essentially technically equal, but that the slight advantages held by TeAM did not justify paying TeAM's higher price. Accordingly, we deny this protest ground.

The protest is denied.

Thomas H. Armstrong
General Counsel