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Decision

Matter of: Morgan Business Consulting, LLC

File: B-418165.6; B-418165.9

Date: April 15, 2021

Todd R. Overman, Esq., Sylvia Yi, Esq., and Roe Talmor, Esq., Bass Berry & Sims, PLC, for the protester.

Stuart W. Turner, Esq., and Eric Valle, Esq., Arnold & Porter Kaye Scholer, LLP, for Synchron, LLC, the intervenor.

Cara R. Little, Esq., and Kelsey Harrer, Esq., Department of the Navy, for the agency. Young H. Cho, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation of proposals and selection decision is denied where the record shows that the agency's evaluation and selection decision were reasonable and consistent with the terms of the solicitation.

DECISION

Morgan Business Consulting, of Arlington, Virginia, protests the issuance of a task order to Synchron, LLC, of Fairfax Station, Virginia, under request for proposals (RFP) No. N66604-18-R-3012, issued by the Department of the Navy, to procure program, business, and engineering management, as well as integrated logistics support services. The protester challenges various aspects of the agency's evaluation of proposals and selection decision.

We deny the protest.

BACKGROUND

The solicitation, issued on August 22, 2018, as a small business set-aside pursuant to the procedures of Federal Acquisition Regulation (FAR) subpart 16.5, sought proposals from holders of the agency's SeaPort-e indefinite-delivery, indefinite-quantity (IDIQ) multiple award contract, for comprehensive engineering, program management, and integrated logistics support services for offices within the program executive office

(PEO) referred to PEO Submarines (PEO SUB) and Team Submarine (TEAM SUB).¹ Agency Report (AR), Encl. 2, Conformed Solicitation at 1, 7, 94.² The solicitation contemplated the issuance of a cost-plus-fixed-fee, fixed-price, and cost-reimbursable task order, with a 1-year base period and four 1-year option periods.³ *Id.* at 19, 94, 95. Award would be made on a best-value tradeoff basis considering the following evaluation factors: technical capability, past performance, and cost/price. *Id.* at 113-114. The technical capability factor was comprised of three subfactors: technical capabilities/corporate experience; personnel; and management plan.⁴ *Id.* at 113. The first two subfactors were of equal importance and each more important than the third subfactor. *Id.* at 114. The solicitation advised that the technical capability factor was more important than the past performance factor, and the two factors, when combined, were significantly more important than the cost/price factor. *Id.*

The Navy received four timely proposals, including those from Morgan and Synchron. Contracting Officer's Statement (COS) at 8. On September 23, 2019, the agency made award to Morgan. *Id.* at 10. The disappointed offerors filed protests with our Office challenging the award to Morgan. *Id.* Subsequent to the filing of the protests, the agency notified our Office of its intent to take corrective action. *Id.* Based on the agency's proposed corrective action to reevaluate the proposals and make a new selection decision, we dismissed the protest as academic. *Id.* at 9.

The offerors' proposals were subsequently reevaluated by a source selection evaluation board (SSEB) and cost evaluation team (CET) as follows:

¹ PEO SUB focuses on the design, construction, delivery, and conversion of submarines and advance undersea and anti-submarine systems. <https://www.navsea.navy.mil/Who-We-Are/Program-Executive-Offices> (last visited Apr. 9, 2021). Team Submarine is a combination of the PEO SUB, the Deputy Commander for the Undersea Warfare, and the Undersea Technology Officer, and unifies once diverse submarine-related activities into a single submarine-centric organization. https://www.secnv.navy.mil/rda/Pages/PEO_Submarines.aspx (last visited Apr. 9, 2021).

² The solicitation was amended once. All citations to the record are to the consecutive numbering in the pages in the Adobe PDF format of the documents provided by the agency.

³ Although this is a task order competition under a multiple-award IDIQ contract, the agency issued the solicitation as an RFP rather than a request for quotations and refers to the submissions of proposals (and offers) from offerors instead of quotations from vendors. For consistency and ease of reference to the record, we do the same.

⁴ The technical capability factor also included seven pass/fail requirements: transition plan; clearance plan; Navy nuclear propulsion information plan local office; local liaison office(s); quality control plan; organizational conflict of interest statement/mitigation plan; and software development plan. RFP at 101-103.

	Morgan	Synchron
Technical Capability⁵	Good/Low Risk	Good/Low Risk
Technical Capabilities/ Corporate Experience	Good	Good
Personnel	Good	Good
Management Plan	Acceptable	Acceptable
Pass/Fail Requirements	Pass	Pass
Past Performance⁶	Substantial Confidence	Substantial Confidence
Total Evaluated Cost	\$119,083,198	\$106,998,695

AR, Encl. 9, Source Selection Advisory Council (SSAC) Report at 10, 36. An SSAC was convened to review the proposals and the evaluation reports from the SSEB and CET. The SSAC concurred with, and adopted, the findings of the evaluation teams. The SSAC then performed a comparative analysis of the proposals, conducted a tradeoff analysis, and made a recommendation for award to Synchron. The source selection authority (SSA) concurred with the SSAC, and determined that Synchron's proposal provided the best value to the government. AR, Encl. 10, Source Selection Authority Decision Document (SSDD) at 1, 5.

On December 21, 2020, the agency informed Morgan that award had been made to Synchron. AR, Encl. 6, Notice to Unsuccessful Offeror at 2. Subsequently, Morgan requested and received a debriefing, which concluded on December 30. *See generally* AR, Encl. 8, Enhanced Debriefing. This protest followed.⁷

DISCUSSION

Morgan challenges numerous aspects of the evaluation of the firm's and Synchron's proposals. In filing and pursuing this protest, Morgan has made arguments that are in addition to, or variations of, those discussed below, as well as arguments that were

⁵ The RFP stated in addition to assigning adjectival ratings under the technical capability factor (outstanding, good, acceptable, marginal, and unacceptable), the agency would also assess technical risk ratings (low, moderate, high, and unacceptable). RFP at 115-116.

⁶ The available confidence ratings for the past performance factor are: substantial confidence, satisfactory confidence, limited confidence, no confidence, and unknown confidence. RFP at 117-118.

⁷ The value of the task order here exceeds \$25 million. Accordingly, this protest is within our Office's jurisdiction to resolve protests involving task orders issued under IDIQ contracts established pursuant to the authority in title 10 of the United States Code. 10 U.S.C. § 2304c(e)(1)(B).

withdrawn or abandoned during the development of the protest.⁸ While we do not address every issue raised, we have considered all of the protester's arguments, to the extent they have not been withdrawn or abandoned, and conclude that none furnishes a basis on which to sustain the protest.⁹ We discuss a few representative examples below.

Challenges to the Evaluation of Morgan's Proposal

As the task order competition here was conducted pursuant to FAR subpart 16.5, our review of protests of an agency's evaluation of proposals does not reevaluate proposals or substitute our judgement for that of the agency. Instead, our review examines the record to determine whether the agency's judgement was reasonable, consistent with the solicitation's evaluation scheme, and compliant with applicable procurement law. *SSI*, B-413486, B-413486.2, Nov. 3, 2016, 2016 CPD ¶ 322 at 5. A protester's disagreement with the agency's judgement, without more, is not sufficient to establish unreasonable agency action. *CSRA LLC*, B-417635 *et al.*, Sept. 11, 2019, 2019 CPD ¶ 341 at 9.

⁸ For example, Morgan initially challenged the evaluation of its and Synchron's past performance, but did not reply to the agency's arguments in response. Protest at 23-25. Where, as here, an agency responds to allegations in its report but the protester does not rebut the agency's positions in its comments, we dismiss the allegations as abandoned because the protester has not provided us with a basis to find the agency's positions unreasonable. *Johnson Controls Sec. Sols.*, B-418489.3, B-418489.4, Sept. 15, 2020, 2020 CPD ¶ 316 at 4 n.3; *Medical Staffing Sols. USA*, B-415571, B-415571.2, Dec. 13, 2017, 2017 CPD ¶ 384 at 3. Since Morgan did not reply to the agency's response, we dismiss these arguments as abandoned.

⁹ During the development of the protest, the agency requested that our Office dismiss several protest grounds. On one of the issues, GAO agreed and advised the parties that we would dismiss the challenge to the agency's evaluation of Synchron's proposal under the management plan subfactor. Electronic Protest Docketing System No. 21. Morgan argued that Synchron's reliance on its subcontractors for corporate experience, personnel, and overall performance, should have resulted in the firm being assessed a weakness under the management plan subfactor because Synchron's "reliance on its subcontractors suggests Synchron itself lacks corporate capabilities to successfully perform the contract." Protest at 17. For this subfactor, the RFP required offerors to submit a management plan. RFP at 106. Other than speculation, the protester provides no explanation as to why Synchron could not have provided an adequate management plan capable of meeting the requirements of the solicitation. Accordingly, we found the allegation failed to state a valid basis of protest. 4 C.F.R. §§ 21.1(c)(4), (f); 21.5(f).

Potential Impact of the [DELETED] Corporate Transaction

Morgan challenges the agency's assessment of several weaknesses to its proposal under the technical approach factor based on the agency's consideration of the potential impact of a subcontractor's corporate transaction.¹⁰ Protest at 20-23; Comments and Supp. Protest at 19-24. Specifically, the protester argues that the agency's conclusions lack a rational basis, asserting that although the transaction resulted in a change of ownership, the only practical effect was a name change to the subcontractor, with no impact on performance. Protest at 21; Comments and Supp. Protest at 20-22.

The Navy explains that during the evaluation it became aware that one of Morgan's subcontractors, [DELETED], sold its [DELETED]--the entity that would be performing under this task order--to [DELETED], Inc., a separate corporate entity. Memorandum of Law (MOL) at 18-30. The agency contends that, at the time of the evaluation, the Navy could not conclude that the sale would result only in a name change to the performing entity with no impact on the contractor's performance. *Id.* at 23, 27-30.

As a general matter, our decisions regarding corporate restructuring after the submission of proposals have involved the question of whether an offeror's proposal relies on resources that may no longer be available after the corporate restructuring. See *EA Eng'g, Sci. and Tech., Inc.*, B-417361, B-417361.2, June 13, 2019, 2019 CPD ¶ 218 at 10; *Honeywell Tech. Solutions, Inc.*, B-413317, B-413317.2, Oct. 5, 2016, 2017 CPD ¶ 2 at 11. Our analysis in these cases is fact-specific, hinging on whether reliance on any such resources are material to the performance of the contract. *EA Eng'g Sci. and Tech., Inc., supra.*

When an agency becomes aware of an impending corporate transaction prior to award--either through information in an offeror's proposal or through other information resources--and such transaction is imminent and essentially certain (or already consummated), an agency should analyze the effect on proposals of the corporate restructuring at issue. *Lockheed Martin Integrated Sys., Inc.--Recon.*, B-410189.7, Aug. 10, 2017, 2017 CPD ¶ 258 at 7 (citing *National Aeronautics & Space Admin.--Recon.*, B-408112.3, May 14, 2014, 2014 CPD ¶ 155 at 3). Key in our analysis on these matters is both whether an agency is aware of a particular transaction, as well as its imminence and certainty. *Id.* As a general matter, an agency's lack of knowledge of a proposed corporate transaction is generally not unreasonable, and an agency generally has no affirmative obligation to discover and consider such information. See, e.g., *VSE Corp.*, B-417908, B-417908.2, Nov. 27, 2019, 2019 CPD ¶ 413 at 8; *Target Media Mid Atlantic, Inc.*, B-412468.6, Dec. 6, 2016, 2016 CPD ¶ 358 at 7; *Veterans Eval. Sys., Inc., et al.*,

¹⁰ The agency assessed four weakness to Morgan's proposal under the technical capability factor. Specifically, the agency assessed one weakness under the technical capabilities/corporate experience subfactor; two under the personnel subfactor; and one under the management approach subfactor. AR, Encl. 13, SSEB Report at 41, 46-48, 49-50.

B-412940 *et al.*, Jul. 13, 2016, 2016 CPD ¶ 185 at 9-10; *TrailBlazer Health Enters., LLC*, B-406175, B-406175.2, Mar. 1, 2012, 2012 CPD ¶ 78 at 18-19.

Here, the record shows after submission of the proposal and during the evaluation, the source selection team learned via a press release that [DELETED] completed the sale of its [DELETED] to [DELETED] on August 1, 2019. AR, Encl. 13, SSEB Report at 35 (*citing* [DELETED]). The record also shows that between the date when proposals were due (October 15, 2018) and the date when award was made (December 18, 2020), Morgan offered no information about the corporate transaction, or any explanation of the potential impact that the transaction might have on its proposal. *Id.* at 35; COS at 9. The agency explains that initially it evaluated Morgan's proposal and assessed strengths based on the information provided in the proposal, inclusive of [DELETED] efforts as proposed. MOL at 20; AR, Encl. 13, SSEB Report at 36-49.

The agency, however, ultimately concluded that it could not ignore the possibility that if Morgan were to receive award, the effort would not be executed as proposed in light of the fact that [DELETED] was no longer part of [DELETED]. MOL at 20; AR, Encl. 13, SSEB Report at 35-36. Accordingly, the agency assigned weaknesses to Morgan's proposal based on the potential impact to Morgan's performance in light of the corporate restructuring of [DELETED] and the sale of [DELETED]'s [DELETED].

The agency further explains that without information from Morgan, the SSEB was left to consider, among other things, "whether the [DELETED] resources proposed [would] be impacted by this sale and how," and whether [DELETED], [DELETED], or a different team member, would be performing the work at issue. AR, Encl. 13, SSEB Report at 35. These concerns resulted in the assessment of five weaknesses to Morgan's proposal under the technical capability factor. *Id.* at 41-42, 45-49. Despite these weaknesses, the SSEB concluded that (1) the risks associated with the weaknesses were low and could be overcome; and (2) those weaknesses neither impact the strengths identified, nor the adjectival ratings assigned. *Id.* at 36-37.

In its protest, Morgan points to another press release and a notification provided by [DELETED] to the Navy for an unrelated procurement, in support of its argument that the agency was "well aware [that] the transaction did not impact either the key management or staff." Protest at 22. In its comments, Morgan argues that because of these documents the agency was aware that the corporate transaction would create a new business unit within [DELETED]. Morgan also argues that the documents advised the Navy that the [DELETED] subsidiary company ([DELETED]) that held the assets required to perform under the task order would become a wholly-owned subsidiary of [DELETED]. Comments and Supp. Protest at 20-21 (*citing* AR, Encl. 14, CET Report at 49). We disagree.

Our review of the press release, issued by [DELETED] in May 2019, shows only that [DELETED] announced that it had entered into an agreement with [DELETED] to acquire [DELETED]'s [DELETED]. In addition, the release stated in general terms that [DELETED] would retain its management team and staff. Protest at 20 n.13 (*citing*

[DELETED]). Moreover, the notification to which Morgan refers was a July 2019 letter from [DELETED] to an unrelated contracting officer--concerning a different procurement altogether. *Id.*, attach. 17, [DELETED] July 2019 Letter. Although the letter from [DELETED] made assurances (to that contracting officer) that the corporate transaction would have no impact on [DELETED]'S proposed technical, management, staffing, or pricing approach for that procurement (Sol. No. N00164-18-R-3004), neither Morgan nor [DELETED] provided similar assurances to the contracting officer for the procurement at issue here. To the extent Morgan contends that the contracting officer here should have imputed knowledge from [DELETED]'s notification to a different contracting officer on a different procurement, we have often observed, each procurement stands alone. *See, e.g., OmniMax*, B-419445, Mar. 4, 2021, 2021 CPD ¶ 114 at 4. On this record, we do not find the agency's consideration of the potential impacts to Morgan's performance, or the assessment of weaknesses, to be unreasonable. Accordingly, this protest ground is denied.

Evaluation of Morgan's Escalation and Indirect Rates

Morgan also argues that the agency arbitrarily and improperly upwardly adjusted its proposed escalation and indirect rates despite the data submitted by the firm supporting its approach. Protest at 12-15; Comments and Supp. Protest at 24-33. The agency explains that it did not find the data convincing and thus reasonably adjusted Morgan's proposed escalation and indirect rates. MOL at 45-57; *see generally* AR, Encl. 15, CET Chair Decl.

When an agency evaluates a proposal for the award of a cost-reimbursement contract or task order, the offeror's or vendor's proposed costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. FAR 15.404-1(d), 16.505(b)(3); *AECOM Mgmt. Servs., Inc.*, B-418467 *et al.*, May 15, 2020, 2020 CPD ¶ 172 at 4. Consequently, the agency must perform a cost realism analysis to determine the extent to which the offeror's or vendor's proposed costs are realistic for the work to be performed. FAR 15.404-1(d)(1); *see Noridian Admin. Servs., LLC*, B-401068.13, Jan. 16, 2013, 2013 CPD ¶ 52 at 5. An agency is not required to conduct an in-depth cost analysis, or to verify each and every item in assessing cost realism; rather, the evaluation requires the exercise of informed judgment by the contracting agency. *See Cascade Gen., Inc.*, B-283872, Jan. 18, 2000, 2000 CPD ¶ 14 at 8; *see* FAR 15.404-1(c). Our review of an agency's cost realism evaluation is limited to determining whether the cost analysis is reasonable and not arbitrary. *See AM Pierce & Assocs., Inc.*, B-413128, B-413128.2, Aug. 22, 2016, 2016 CPD ¶ 270 at 6. A protester's disagreement with the agency's judgment, without more, does not provide a basis to sustain the protest. *Imagine One Tech. & Mgmt., Ltd.*, B-412860.4, B-412860.5, Dec. 9, 2016, 2016 CPD ¶ 360 at 15-16.

The solicitation advised that for all cost-type contract line item numbers (CLINs), the agency would perform a cost realism analysis of each offeror's proposed costs and that "the burden of cost credibility" rested with the offer. RFP at 107. As such, the solicitation instructed offerors to submit substantiating cost data for each element of its

cost (e.g., direct labor, fringe rate, overhead rate, general and administrative rate, subcontract costs). *Id.* Offerors were warned that providing insufficient information to substantiate the realism of any proposed cost could result in a cost adjustment. *Id.*

With regard to proposed escalation rates, where the CET found that the rate was not adequately substantiated, the agency compared the rate to the current IHS Global Insight Rate (GIR) for professional, scientific, and technical services, which the agency used as a comparative baseline. AR, Encl. 14, CET Report at 7-8. Where a proposed rate was higher than the GIR, the agency used the higher rate. *Id.* at 8. Where the rate was lower than the GIR, the CET reviewed the rate to assess whether it was sufficiently supported; if so, the rate was accepted. *Id.* If the CET concluded the rate was not sufficiently supported, the higher GIR rate was used. *Id.* The CET considered the following sources, in order of precedence, to provide sufficient support for a proposed rate: a Defense Contract Management Agency (DCMA) forward pricing rate agreement (FPRA); a DCMA forward pricing rate recommendation (FPRR); a Defense Contract Audit Agency (DCAA) audit; or historical actual rate information. *Id.*

With regard to indirect rates, the solicitation instructed offerors to identify the basis for the proposed rates (e.g., FPRA and date of agreement, bidding rates and the date of submission; or, actual rates used and the effective date, billing rates, and the date of approval, etc.). RFP at 109. For these rates, the CET again made upward adjustments to rates the CET concluded were not sufficiently supported. AR, Encl. 14, CET Report at 6.

The CET considered the following sources, in order of precedence, to provide sufficient support for a proposed indirect rate: DCMA FPRA; DCMA FPRR; DCAA audit; or actual historical rate information provided by the offeror. *Id.* The CET did not consider provisional billing rates (PBRs) alone to provide sufficient support for indirect rates because, according to the DCAA, PBRs were for billing purposes only. *Id.* As relevant here, where no FPRA, FPRR, or DCAA audit data was available, the CET analyzed the rate using a three year historical average for the rate, and compared the average to the proposed rate. *Id.* at 7. Where the proposed indirect rate was below the three-year average, and where the offeror did not provide sufficient support for the lower proposed rate, the CET adjusted the rate to the three-year average. *Id.*

Based on our review of the agency's analyses, we find first that the agency reasonably concluded that Morgan did not sufficiently support its proposed escalation rate of [DELETED]%. *Id.* at 57. While the protester's proposal cited to the [DELETED]% escalation rate calculated by the Bureau of Labor Statistics's Employment Cost Index for Private Industry Workers, Morgan proposed an escalation rate of [DELETED]%. AR, Encl. 11g, Morgan's Cost Proposal at 8. Morgan attempted to justify its lower proposed rate by predicting that more senior personnel will leave the program, and be replaced by more junior resources, thus leading to a lower rate. *Id.* Morgan further stated that its proposed escalation rate was justified because of the firm's "real-world experience" in [DELETED] high-cost of living markets ([DELETED]). *Id.* However, nothing in Morgan's proposal provided any support or explanation about how turnover, the firm's efforts to

reduce its indirect rates, or its “real world experience” with lower escalation rates in other offices, supported the lower rate proposed here. *Id.* at 8-9. Although Morgan may disagree with the agency’s conclusions, the record shows that the agency reasonably concluded that the information provided by Morgan in its proposal did not sufficiently support its escalation rate.

Similarly, the record shows that the CET reviewed the information provided by Morgan to substantiate the firm’s indirect rates and found that those rates as well were not sufficiently supported. AR, Encl. 14, CET Report at 58-60. Morgan’s proposal stated that it did not have a FPRA, FPRR, or DCAA audit of its indirect rates. AR, Encl. 11g, Morgan’s Cost Proposal at 9. Instead, Morgan provided three years (2015-2017) of historical indirect data, its provisional indirect rates for 2018, and its proposed indirect rates for 2019. *Id.* Morgan stated that, for 2018 and 2019, it had recalculated its expected indirect rates and had identified nine factors that it concluded supported the change in indirect rates. *Id.* at 9-12. The proposal also included a spreadsheet that purported to support its indirect rates. *Id.* at 9 (*citing* AR, Encl. 11l, Morgan Indirect Burden Supporting Documentation).

The CET did not, however, find Morgan’s proposed rates--which were lower than its historical rates--to be sufficiently supported, and concluded that the proposed indirect costs were unrealistic. AR, Encl. 14, CET Report at 58-59. The agency provided a declaration from the chair of the CET, explaining that the CET found the supporting information to be “vague, inconsistent, and not traceable for the purposes of cost realism.” AR, Encl. 15, CET Chair Decl. at 5. Specifically, the agency explains that Morgan’s supporting cost documentation only showed “higher level summary calculations and did not provide any level of granularity to show the calculations or factors that led to the changes in the cost elements and associated increases or decreases in pools and/or base amounts.” *Id.*

Morgan urges our Office to reject the explanations provided by the chair of the CET in answer to the protest as *post hoc* rationalization not supported by the contemporaneous evaluation record. Comments and Supp. Protest at 28. Our Office generally accords lesser weight to *post-hoc* arguments or analyses made in response to protest allegations because we are concerned that new judgments made in the heat of an adversarial process may not represent the fair and considered judgment of the agency. *Boeing Sikorsky Aircraft Support*, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15. In contrast, we will consider agencies’ explanations that provide a detailed rationale for contemporaneous conclusions and fill in previously unrecorded details, so long as the explanations are credible and consistent with the contemporaneous record. *Native Energy & Tech., Inc.*, B-416783 *et al.*, Dec. 13, 2018, 2019 CPD ¶ 89 at 4. Here, we find the agency’s explanation to be both credible, and consistent with the contemporaneous record. As a result, we find unobjectionable the CET’s decision not to accept Morgan’s lower proposed indirect rates, and to upwardly adjust the protester’s

proposed rates based on a comparison of the proposed rates to average historical rates.¹¹ Accordingly, this protest ground is denied.

Synchron's Compliance with the Limitation on Subcontracting Clause

Morgan argues that Synchron's proposal should have been found ineligible for award for proposing to perform less than 50% of the proposed effort and that Synchron's proposal, on its face, violated FAR clause 52.219-14, Limitation on Subcontracting. Comments and Supp. Protest at 2-3; Comments at 2-8. The Navy contends that Morgan's allegation regarding Synchron's compliance with the limitation on subcontracting clause is an issue of responsibility and contract administration not generally reviewed by GAO. Supp. MOL at 3-9. The agency also argues that Synchron's proposal, on its face, led it to the conclusion that the firm would comply with the subcontracting limitations set forth in FAR clause 52.219-14. *Id.*

As a general matter, the Navy is correct in its assertion that an agency's judgment as to whether a small business offeror will be able to comply with a subcontracting limitation presents a question of responsibility not subject to our review. *Hughes Coleman, JV*, B-417787.5, July 29, 2020, 2020 CPD ¶ 257 at 4-5 n.4; *Spectrum Sec. Servs., Inc.*, B-297320.2, B-297320.3, Dec. 29, 2005, 2005 CPD ¶ 227 at 6. A proposal need not affirmatively demonstrate compliance with the limitation on subcontracting clause. See *Dorado Servs., Inc.*, B-408075, B-408075.2, June 14, 2013, 2013 CPD ¶ 161 at 12. Rather, such compliance is presumed unless specifically negated by other language in the proposal. See *Express Med. Transporters, Inc.*, B-412692, Apr. 20, 2016, 2016 CPD ¶ 108 at 6. However, where a proposal, on its face, should lead an agency to the conclusion that an offeror has not agreed to comply with the subcontracting limitation, the matter is one of the proposal's acceptability, which GAO will review. *TYBRIN Corp.*, B-298364.6, B-298364.7, Mar. 13, 2007, 2007 CPD ¶ 51 at 5.

Here, the solicitation incorporated FAR clause 52.219-14, RFP at 80, and Synchron's proposal affirmatively stated that "Synchron will execute over 50% of the labor cost." AR, Encl. 12b, Synchron Tech. Capability Proposal at 115. Morgan contends that Synchron did not intend to comply with the limitation on subcontracting, based on Morgan's alternative computation of the percentage of costs allocated to the prime and the subcontractors, which, by its own admission "requires some arithmetic." Comments and Supp. Protest at 3-4. Specifically, Morgan provides a computation that combines figures from Synchron's cost proposal to calculate the total proposed subcontractor cost and fee, and compares the resulting sum with the price for a fixed-priced CLIN, proposed to be performed by a subcontractor. *Id.*

The agency explains that Morgan's computational methodology does not demonstrate that it was "clear on the face" of the proposal that Synchron did not intend on complying with the subcontracting limitations. Specifically, the agency notes that Morgan cannot

¹¹ The historical rates were derived by averaging Morgan's actual indirect rates--obtained from DCAA--for 2016 through 2018. AR, Encl. 14, CET Report at 59-60.

show that the fixed-price CLIN only included personnel costs, or that the sum of subcontractor prices calculated by Morgan did not include any other labor costs that might be incurred by Synchron for that CLIN. Supp. MOL at 5-6. We agree. Because Morgan has not shown that Synchron's proposal takes exception to the subcontracting limitation, or clearly demonstrated that Synchron would not comply with the subcontracting limitation, the protest ground is denied. *D&G Support Servs., LLC*, B-419245, B-419245.3, Jan. 6, 2021, 2021 CPD ¶ 15 at 11-12.

Disparate Treatment

Morgan also alleges that the agency's evaluation of the technical and cost proposals here were unequal in numerous respects. Comments and Supp. Protest at 4-17; Comments at 8-18.

In conducting procurements, agencies may not generally engage in conduct that amounts to unfair or disparate treatment of competing offerors. *22nd Century Techs., Inc.*, B-416669.5, B-416669.6, Aug. 5, 2019, 2019 CPD ¶ 285 at 7; *Arc Aspicio, LLC et al.*, B-412612 *et al.*, Apr. 11, 2016, 2016 CPD ¶ 117 at 13. It is a fundamental principle of federal procurement law that a contracting agency must treat all offerors equally and evaluate their offers evenhandedly against the solicitation's requirements and evaluation criteria. See *Sumaria Sys., Inc.; COLSA Corp.*, B-412961, B-412961.2, July 21, 2016, 2016 CPD ¶ 188 at 10. Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the proposals. *Camber Corp.*, B-413505, Nov. 10, 2016, 2016 CPD ¶ 350 at 8.

Again, we have fully considered all of the protester's arguments and concluded that none provide a basis to sustain the protest. We discuss a few representative examples below.

Strength for Inclusion of Lean Six Sigma and PMP Certified Personnel

Morgan argues that it was unreasonable and unequal for the agency to assess a strength to Synchron, under the technical capabilities/corporate experience subfactor, for including Lean Six Sigma processes and program management professionals (PMP), but not to assess a similar strength to Morgan's proposal because the protester proposed essentially identical features in its proposal.¹² Comments and Supp. Protest at 4-6; Comments at 8-10. The Navy explains that Synchron thoroughly addressed the solicitation's requirement to describe the offeror's approach to maintaining schedule and quality of deliverables while Morgan did not. Supp. MOL at 10-14. The agency states that because Synchron's approach placed an emphasis on the roles and qualifications of its management personnel in meeting the solicitation's requirements, the agency

¹² The agency explains that Lean Six Sigma is a management approach used for quality control and continuous process improvement through a series of steps. Supp. AR, attach. A, SSEB Member Decl. at 1.

concluded it was appropriate to mention those qualifications in assessing a strength to the proposal. *Id.* at 12-13. According to the Navy, the offerors proposed different approaches under this subfactor, and to the extent that Morgan's proposal offered to use an approach that included any use of Lean Six Sigma tools or PMP-certified personnel, it was in connection with Morgan's quality control plan (QCP), which was submitted and evaluated under the pass/fail requirements of the technical capability factor. *Id.* at 13-14.

The technical capability factor was comprised of seven pass/fail requirements and three subfactors. RFP at 101-106. Relevant here, one of the pass/fail requirements was the QCP, which was evaluated to assess the adequacy of the offeror's ability to perform the requirements of the statement of work. *Id.* at 119. Under this requirement, offerors were instructed to submit a QCP that described their approaches for: periodically monitoring technical quality, cost performance, contract management effectiveness, promoting customer feedback and responsiveness, and raising and resolving issues to the appropriate management level. *Id.* at 102.

Also relevant here, the agency explained that under the technical capabilities/corporate experience subfactor within the technical capability factor, it planned to "evaluate the [c]ontractor's experience [with] maintaining schedules and providing quality deliverables with minimal [g]overnment oversight or rework of deliverables with continuous integration and interaction with internal and external organizations and activities." *Id.* at 119. To address this area, offerors were instructed to "describe their approach and demonstrated experience [with] maintaining schedule and quality of deliverables with minimal Government oversight or rework of deliverables." *Id.* at 103.

Both offerors submitted QCPs that received a rating of "pass." AR, Encl. 13, SSEB Report at 3. Under the technical capabilities/corporate experience subfactor, the SSEB assessed a strength to Synchron's proposal, finding that "Synchron's proposal demonstrates a dedicated approach to process improvement through a thorough [QCP] executed by personnel with Lean Six Sigma and [PMP] certifications. (Proposal Section 3.6, pg. 67-68; Section 4.3, pg. 72-100)." *Id.* at 93. The SSEB also found that "Synchron's approach includes utilization of certified PMPs [and Lean Six Sigma] Green Belts and Black Belts, leveraging Lean Six Sigma tools to streamline processes and achieve increased workforce productivity [which] will reduce cycle time for the introduction of new and improved procedures, and enhance product quality." *Id.*

The record shows that Synchron's proposal offered a detailed approach to maintaining schedule and quality of deliverables, providing details about its QCP and the roles of the key personnel such as the program manager (PM), deputy PM, and task leads. AR, Encl. 12b, Synchron Tech. Capability Proposal at 74-75 (section 3.6). With regard to the PM and deputy PM, Synchron's proposal specifically stated that both were PMP certified. *Id.* The proposal also stated that Synchron has "invested in highly qualified personnel in management positions across the Team," however, the proposal did not provide any additional information about task leads in this section or specifically state that the company would use "Lean Six Sigma" processes in its approach. *Id.* at 74.

Rather, the resumes submitted under the personnel subfactor reflected that three of the identified task leads had Lean Six Sigma certifications. *Id.* at 87, 93, 103 (section 4.5).

In contrast, Morgan's proposal did not offer a detailed approach to maintaining schedule and quality of deliverables in the section of the proposal addressing the technical capabilities/corporate experience subfactor. Morgan's proposal, however, stated in its QCP that "Team [Morgan] utilizes certified PMP's, Green Belts, and Black Belts using Lean Six Sigma tools to achieve increased workforce productivity and enhance product quality." AR, Encl. 11b, Morgan Tech. Capability Proposal at 18. The record shows that the agency considered this representation as support for the agency's conclusion that Morgan's QCP should be rated as "pass" under the pass/fail requirement. AR, Encl. 13, SSEB Report at 60 (noting that "Tables 2-9 & 2-10 detail the interaction of Team [Morgan] with the Government personnel. Team [Morgan] utilizes certified PMP's, Green Belts, and Black Belts using Lean Six Sigma tools to achieve increased workforce productivity and enhance product quality.").

Based on our review of the record, we do not find the agency's evaluation here to be unequal or unreasonable. We see no support for the agency's conclusion that Synchron offered to use Lean Six Sigma tools to perform this contract. We nonetheless do not find unreasonable the conclusion that Synchron "demonstrates a dedicated approach to process improvement through a thorough [QCP] executed by personnel with Lean Six Sigma and [PMP] certifications." AR, Encl. 13, SSEB Report at 93-94.

We also do not find the agency's evaluation here unequal. In this regard, the agency was not required to search for information about Morgan's approach to maintaining schedule and quality of deliverables that the solicitation instructed offerors to address under the technical capabilities/corporate experience subfactor in other areas of its proposal; *i.e.*, the section of the protester's proposal addressing its QCP. See *Dewberry Crawford Grp.; Partner 4 Recovery*, B-415940.10 *et al.*, July 2, 2018, 2018 CPD ¶ 297 at 13. It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information that clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. *Mike Kesler Enters.*, B-401633, Oct. 23, 2009, 2009 CPD ¶ 205 at 2-3. An offeror runs the risk that a procuring agency will evaluate its proposal unfavorably where it fails to do so. *International Med. Corps*, B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 7. Accordingly, this protest ground is denied.

Waiver of Certain Key Personnel Requirements

Morgan also argues that the Navy waived the qualification requirements for key personnel positions solely to cure unacceptable deficiencies in Synchron's proposal. Comments and Supp. Protest at 7-9; Comments at 20-21. Morgan further contends that the agency's contemporaneous analysis of the impact of the waiver was flawed because it was limited to the potential cost impacts and did not consider the technical impact and prejudice to other offerors. *Id.*

The Navy explains that during evaluations the evaluators concluded that certain qualification requirements associated with four key personnel positions were not necessary to satisfy the agency's actual needs. The agency also states that it considered the utility of the increased requirements and specifically considered the possibility of prejudice to any offeror by application of the waiver. The agency asserts that its decision was not tailored to benefit any one offeror, and that Morgan cannot demonstrate how it was prejudiced. Supp. MOL at 16-21 (*citing* AR, Encl. 10, ref (d), Key Personnel Waiver Sensitivity Analysis at 3).

Our Office has explained that an agency may waive or relax a material solicitation requirement when the award will meet the agency's actual needs without prejudice to the other offerors. *Booz Allen Hamilton, Inc.*, B-417418 *et al.*, July 3, 2019, 2019 CPD ¶ 246 at 6. Unfair competitive prejudice from a waiver or relaxation of the terms and conditions of a solicitation for one offeror exists where the protester would have altered its proposal to its competitive advantage had it been given the opportunity to respond to the altered requirements. *22nd Century Techs., Inc.--Recon.*, B-417478.5, Apr. 28, 2020, 2020 CPD ¶ 153 at 4.

The RFP identified 15 key personnel positions and specified required and desired qualifications for each position. See *generally* RFP, attach 3, Key Personnel List. During the evaluation, the SSEB identified four key personnel positions with associated qualification requirements that exceeded what the evaluators believed were necessary to meet the agency's needs.¹³ AR, Encl. 10, ref (d), Key Personnel Waiver Sensitivity Analysis at 3. The SSAC and contracting officer concurred with the waiver. *Id.* at 4. The SSA, however, requested that the contracting officer perform a sensitivity analysis to ensure that the source selection decision took into account the potential impacts of the waiver of these requirements on the offerors. AR, Encl. 10, SSDD at 4.

The contracting officer completed the sensitivity analysis, which included the SSEB's and SSAC's assessment of the potential impacts of waiver on the Navy's technical requirements. The SSA considered this analysis and found that the waived key personnel requirements were not necessary to meet the agency's needs. *Id.* The SSA also found that the technical evaluation ratings for offerors were not negatively impacted by the waiver (*i.e.*, no offeror would have received a higher rating if the waiver was not executed). *Id.* As a result, the SSA found that the waiver did not meaningfully affect his tradeoff decision. *Id.*

Relevant here, the sensitivity analysis also included an analysis of any potential evaluated cost/price impact on the offerors. AR, Encl. 10, ref (d), Key Personnel Waiver Sensitivity Analysis at 8-9. The cost/price sensitivity analysis showed that Synchron's total evaluated cost/price would remain lower than Morgan's even if Morgan were

¹³ The waivers were for the degree field (technical or business) requirement for three analyst positions; and the degree field and length of experience (10 years or more) requirement for another analyst position. AR, Encl. 10, ref (d), Key Personnel Waiver Sensitivity Analysis at 6-7.

credited for lower labor rates to account for the waiver. *Id.* Based upon his independent review, the SSA concluded that Synchron's proposal still offered a better overall value than Morgan's because Synchron remained technically superior with a lower total evaluated cost/price. AR, Encl. 10, SSDD at 4-5.

There is nothing in the record showing that the agency's waiver of the requirements was disparate or it was "solely to cure the unacceptable deficiencies in Synchron's proposal." Comments and Supp. Protest at 7. Rather, the record shows that, during the evaluation, the Navy found that several requirements for four key personnel positions were overstated and unnecessary to meet the agency's needs. The fact that the agency did not waive requirements for other key personnel positions does not demonstrate that the agency's actions here are unreasonable. As we have stated, the decision to waive a solicitation requirement, even when permissible, is a discretionary action; an agency is not required to waive a solicitation requirement and offerors have no entitlement to a waiver. *Inalab Consulting, Inc.*, B-418950, Oct. 9, 2020, 2020 CPD ¶ 327 at 6.

Similarly, Morgan's assertion that the agency's waiver analysis was flawed because it was limited to the potential cost impacts and did not consider the technical impact and prejudice to other offerors is not supported by the record. The record shows that the SSA specifically considered whether any offeror was negatively impacted by the waiver--to include whether any offeror would have received a higher (or lower) technical rating as a result of the waiver.¹⁴ AR, Encl. 10, SSDD at 4 (SSA concluding that the technical ratings for the offerors were not negatively impacted by the waiver because no offeror would have received a higher rating without the waiver).

The agency's analysis also took into consideration two different cost scenarios as a result of the waiver. The first scenario was based on the changes to the total evaluated cost that hypothetically reduced the cost/price of the four key personnel positions that were affected by the waiver to \$0 for all offerors other than Synchron. AR, Encl. 10, ref (d), Key Personnel Waiver Sensitivity Analysis at 2-3, 8. The second scenario was based on the potentially lower total evaluated cost if the cost of the proposed personnel for the four positions was reduced to a lower labor category. *Id.* at 3, 9. This showed that under both scenarios, Synchron's total evaluated cost/price was still lower than that

¹⁴ Morgan also argues that it was prejudiced by the agency's waiver of these key personnel requirements because if provided an opportunity to submit a revised proposal, Morgan would have: (1) offered alternate key personnel that exceeded the requirements; and (2) confirmed the availability of key personnel as proposed and would not have been negatively impacted by its subcontractor's corporate transaction. Comments and Supp. Protest at 13-14; Comments at 8-9. We find these arguments to be untimely, because Morgan was made aware that the agency waived these requirements at the time of the debriefing, but did not raise these arguments until it filed its comments on the agency report, approximately 40 days after its initial protest was filed. 4 C.F.R. § 21.2(a)(2); *InterImage, Inc.*, B-415716.29, Aug. 9, 2019, 2019 CPD ¶ 399 at 8.

of Morgan's. *Id.* at 8, 9. On this record, we do not find the agency's actions reflect disparate treatment or are unreasonable. Accordingly, this protest ground is denied.

Evaluation of Escalation Rates

Morgan also argues that the agency unequally evaluated the offerors' labor escalation rates by applying two years' of escalation to Morgan's proposed direct labor rates but only one year of escalation to Synchron's rates. Comments and Supp. Protest at 11-17; Comments at 16-18. The Navy explains that because both offerors provided different information in their proposals, the agency fairly evaluated the proposed escalation rates, consistent with the solicitation and established cost methodologies, taking into consideration information provided by each offeror. Supp. MOL at 25-30.

The RFP instructed offerors to provide detailed information to allow the contracting officer to assess the cost realism and reasonableness of the proposed costs. RFP at 108. Relevant here, offerors were to provide details about the basis of labor rates proposed, labor escalation factors applied, and burden factors. *Id.*

The CET found that Morgan's proposed escalation rate of [DELETED]% was not adequately supported, and thus upwardly adjusted it to the GIR rate of 3.60%. AR, Encl. 14, CET Report at 7-8, 57. Additionally, because Morgan's fiscal year runs from [DELETED] to [DELETED] and Morgan annualized its salary in [DELETED] of each year, the CET had to make an adjustment to account for the period from May 30, 2019 (the original planned award date) to July 1, 2020 (the revised planned award date). As a result, the CET escalated Morgan's labor rate by two years, to account for wage increases from 2018 to 2019, and from 2019 to 2020.¹⁵ *Id.* at 56-57.

Similarly, Synchron proposed an escalation rate of [DELETED]%, which the CET also found was not sufficiently supported. *Id.* at 188. Accordingly, the CET upwardly adjusted Synchron's labor rate to the GIR rate of 3.60%. *Id.* The CET prorated the base year labor rates to account for the period from May 30, 2019 to July 1, 2020, by multiplying 3.60% by 1.09 years to arrive at 3.93%. *Id.*

Here, the record shows that Morgan's proposal clearly stated that "[Morgan's] fiscal year runs from [DELETED] through [DELETED]." AR, Encl. 11g, Morgan Cost Proposal at 4. As such, we find the CET reasonably concluded that Morgan's proposed direct labor rates would have increased twice from when they were proposed in October 2018, once on January 1, 2019, and once on January 1, 2020. AR, Encl. 14, CET Report at 55-57.

Synchron's proposal, however, did not make any representations about its fiscal year or provide specific information about when labor rate increases would be applicable. Supp. MOL at 28. As such, we do not find objectionable the CET's assumption that

¹⁵ The proposals were submitted in 2018 and Morgan provided direct labor rates from [DELETED] 2018. AR, Encl. 14, CET Report at 55; see generally AR, Encl. 11m, Morgan Cost Proposal Payroll Journals.

Synchron's labor rates would increase within a year from proposal submission to reflect the rates the employees would most likely be paid when the contract period began. *Id.*; AR, Encl. 14, CET Report at 188. Our review of the record reflects that the differences in the agency's evaluation were the result of differences in the offerors' proposals, not the result of disparate treatment. Accordingly, Morgan's protest ground is denied. *Logistics Mgmt. Inst., B-417601 et al.*, Aug. 30, 2019, 2019 CPD ¶ 311 at 10.

Selection Decision

Finally, Morgan argues that the agency's selection decision was flawed because of the underlying evaluation errors. Protest at 25-26; Comments and Supp. Protest at 40-41. Given our conclusion that the evaluation was reasonable, equal, and supported by the record, there is no basis to object to the agency's award decision on the grounds asserted by Morgan. As discussed above, the record does not support the protester's challenges to the agency's evaluation. Accordingly, given that the agency's selection decision had a reasonable basis and was properly documented, and given that Morgan has not prevailed on any of its substantive challenges, we see no basis to disturb the selection decision here.

The protest is denied.

Thomas H. Armstrong
General Counsel