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## Decision

**Matter of:** CoreCivic, Inc.

**File:** B-418620; B-418620.2

**Date:** July 8, 2020

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### DIGEST

1. Protest challenging the adequacy of discussions is denied where the record shows that the agency's conduct of discussions was either reasonable, or that any alleged errors were not prejudicial to the protester.
  2. Challenge to the agency's price realism analysis is denied where the record demonstrates that the agency's actions were reasonable and the protester abandoned the majority of its substantive arguments.
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### DECISION

CoreCivic, Inc., of Brentwood, Tennessee, protests the award of a contract to BI Incorporated, of Boulder, Colorado, the incumbent, under solicitation No. 70CDCR19R00000002, issued by the Department of Homeland Security, Immigration and Customs Enforcement (ICE), for services in support of the Intensive Supervision Appearance Program (ISAP) IV. CoreCivic challenges the agency's conduct of discussions, technical and price evaluation, and award decision.

We deny the protest.

## BACKGROUND

Issued on May 17, 2019, the RFP sought a contractor to support the ICE component responsible for the development and implementation of programs that provide cost-effective alternatives to secure detention, including ISAP IV, a program using technology and case management to ensure compliance with release conditions, court appearances, and final orders of removal while allowing undocumented immigrants to remain in their communities. Agency Report (AR), Tab 2, RFP amend. 1 at 25.<sup>1</sup> The ISAP IV contractor would provide community-based supervision, in-person reporting, telephonic reporting, and GPS monitoring or biometric technology monitoring services across the nation. *Id.*

The RFP contemplated the award of a fixed-price, indefinite-delivery, indefinite-quantity contract with a performance period of a base year and four 1-year option periods. AR, Tab 6, RFP amend. 5 at 66. The RFP contemplated award on a best-value tradeoff basis, considering three evaluation factors: technical, past performance, and price. RFP at 74. The technical factor was more important than past performance, and when combined, these factors would be more important than price. *Id.*

The technical factor included two subfactors: staffing plan/qualifications of key personnel (staffing plan) and operations plans. *Id.* Although the sub-factors would not be separately rated, the staffing plan was more important than the operations plan. *Id.* Price would be evaluated for reasonableness in accordance with one or more price analysis techniques identified in Federal Acquisition Regulation (FAR) section 15.404 and any proposal found to be unreasonable or materially unbalanced could be rejected. AR, Tab 2, RFP amend. 1 at 144. The RFP stated that if considered to be in the best interest of the government, the government intended to make award on the basis of initial offers without discussions and advised offerors to submit their best price and technical proposal in their initial submission. RFP at 67; AR, Tab 15, Emails between ICE and CoreCivic at 40.

By the July 1 initial closing date, the agency received proposals from only CoreCivic and BI. COS at 7. The agency evaluated proposals and decided to hold discussions. *Id.* at 8. On September 10, ICE issued clarification and discussion questions to CoreCivic regarding its past performance, price, and technical proposals. AR, Tab 13, CoreCivic Discussions at 3-5.<sup>2</sup> As relevant here, ICE informed CoreCivic that its proposed pricing for 11 of the 26 contract line item numbers (CLINs) identified in the RFP appeared significantly understated. *Id.* at 4-5.

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<sup>1</sup> The RFP was amended five times after issuance. Three amendments were issued prior to submission of initial proposals. Contracting Officer's Statement (COS) at 7. Two amendments were issued after the agency evaluated initial proposals and engaged in discussions. Citations to the RFP are to amendment 5 unless otherwise stated.

<sup>2</sup> Citations in this decision are to the pages in the Adobe pdf versions of the documents provided by the parties.

On September 19, ICE issued amendment 4 requesting that offerors respond to a newly added CLIN by revising price and technical proposals. AR, Tab 5, RFP amend. 4 at 1. The agency issued a letter with the amendment that advised offerors that the agency would request final proposal revisions at the conclusion of discussions. AR, Tab 14, Sept. 19, 2020 Letter at 2 (emphasis in original). Response to discussion questions and amendment 4 were due by October 3. AR, Tab 15, Emails between ICE and CoreCivic at 17.

On October 3, CoreCivic submitted a revised proposal and did not increase its price. Protest at 9. Instead, CoreCivic explained that it intentionally submitted a low priced offer with prices that were lower than historical prices and specifically targeted certain CLINs for discounts. AR, Tab 16, CoreCivic October 3, 2019 Response at 67-68. As relevant here, CoreCivic also stated that it understood CLIN X001, contract management, to operate as a minimum guarantee for ISAP revenue and that it priced CLINs X005, X005a, X005b (enrollment CLINs) equally low because it expected an enrolled participant to generate sufficient revenue and profit over the duration of their stay in the program. *Id.*

On December 3, the agency issued amendment 5, which advised that price proposals would also be evaluated for realism. RFP at 79. The agency directed offerors wishing to be considered for award to sign Standard Form 30 and complete a revised pricing template by December 17. AR, Tab 15, Emails between ICE and CoreCivic at 37, 46-47. The amendment also advised that pricing proposed in the revised pricing template would be used as the contract price for evaluation purposes. RFP at 72. The RFP also stated that unrealistically low prices could indicate an inability to understand requirements and a high-risk approach to contract performance. *Id.* Offerors were informed that unrealistic, unreasonable, or unbalanced prices would be determined unacceptable. *Id.*

CoreCivic and BI responded to amendment 5 by the December 17 closing date. After evaluating revised proposals, the final ratings were as follows:

	<b>BI</b>	<b>CoreCivic</b>
<b>Technical<sup>3</sup></b>	Excellent	Marginal
<b>Past Performance</b>	Substantial Confidence	Substantial Confidence
<b>Total Price</b>	\$2,598,425,038	\$1,987,084,681

AR, Tab 25, CoreCivic Debriefing at 2.

<sup>3</sup> The agency assigned the technical proposals adjectival ratings, which were, from highest to lowest: excellent, good, acceptable, marginal, and unacceptable. RFP at 80-81. A proposal rated as excellent exceeded requirements in a manner beneficial to the government and demonstrated an exceptional understanding of the goals and objectives of the acquisition with a very low risk of unsuccessful performance. *Id.* at 80. A proposal rated as marginal demonstrated a fair understanding of the goals and objectives of the acquisition, but failed to meet all minimum requirements, and indicated a high risk of unsuccessful performance. *Id.* at 81.

CoreCivic's technical proposal received a marginal rating based on the agency's assessment of two significant weaknesses and seven weaknesses under the operation plan subfactor. AR, Tab 23, Source Selection Decision (SSD) at 40. CoreCivic's price was determined to be unrealistic, lacking an understanding of the requirement, and posing an unacceptable risk to the successful performance of the contract. *Id.* at 51. The source selection authority (SSA) determined that BI's proposal offered the best value to the government based on the SSA's integrated assessment and comparison of the strengths and weakness identified in CoreCivic's and BI's proposals. *Id.* at 2.

On March 23, 2020, the agency notified CoreCivic of its award decision. After timely requesting and receiving a debriefing, which stated that CoreCivic's proposal was eliminated due to its unrealistically low price, CoreCivic protested to our Office on March 30.

## DISCUSSION

The protester challenges the agency's conduct of discussions with CoreCivic and the evaluation of CoreCivic's price and technical proposals. Although we do not specifically address all of the protester's arguments in this decision, we have fully considered them and find no basis on which to sustain the protest.<sup>4</sup> For the reasons discussed below, we find the agency's conduct of discussions was either reasonable or that any errors did not competitively prejudice CoreCivic. We also conclude that the agency's price realism analysis was unobjectionable.

### Discussions

The protester raises various challenges to the price and technical discussions conducted by the agency. Specifically, CoreCivic contends that price discussions were

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<sup>4</sup> Prior to the submission of the agency report, BI requested dismissal of the challenge to the agency's price reasonableness evaluation of BI's proposal, arguing that CoreCivic failed to show a factual and legal basis to question the agency's evaluation and source selection judgment. Intervenor's Request for Dismissal at 9-11. Our review showed that CoreCivic did not provide a factual basis to challenge the evaluation of BI's proposal; rather, CoreCivic alleges that it accurately reconstructed BI's pricing based on publicly available data and, based on this reconstruction, could show that BI's price was unreasonably high due to high profit margins. Protest at 8-10. However, CoreCivic's contentions did not provide a sufficient factual basis to challenge the reasonableness of ICE's evaluation judgments. In this regard, CoreCivic's alleged ability to reconstruct the awardee's price and profit margin is merely speculation and does not show that the awardee's price, which was less than the independent government cost estimate (ICGE), was unreasonably high. Accordingly, we did not require the agency to respond to CoreCivic's challenges to the price reasonableness evaluation of BI's proposal in the agency report and we dismiss those arguments here. 4 C.F.R. § 21.5(f); Electronic Protest Docketing System No. 25.

not meaningful because the agency used different pricing tools when comparing initial and final price proposals without reopening discussions, failed to raise its true concerns regarding the protester's price, never requested final proposal revisions, and did not allow CoreCivic to revise its proposal after issuing amendment 5. Protest at 8; Comments and Supp. Protest at 8-11. The protester also contends that the agency's technical discussions were prejudicial and not meaningful because the agency failed to raise one weakness that was present in the initial and final evaluation, despite CoreCivic's final technical evaluation resulting in the assessment of seven weaknesses and two significant weakness. Comments and Supp. Protest at 14-15. We find no basis to sustain the challenges to the agency's conduct of discussions.

It is a fundamental principle of negotiated procurements that discussions, when conducted, must be meaningful; that is, the discussions must be sufficiently detailed and identify the deficiencies and significant weaknesses found in an offeror's proposal that could reasonably be addressed so as to materially enhance the offeror's potential for receiving award. FAR 15.306(d)(3); *General Dynamics Info. Tech., Inc.*, B-417616.2, B-417616.3, Mar. 31, 2020, 2020 CPD ¶ 132 at 11. Further, an agency may not mislead an offeror--through the framing of a discussion question or a response to a question--into responding in a manner that does not address the agency's concerns, or misinform the offeror concerning a problem with its proposal or about the government's requirements. *Veterans Evaluation Servs., Inc. et al.*, B-412940.26 *et al.*, Jan. 5, 2017, 2017 CPD ¶ 17 at 19.

We first address the protester's arguments that the agency's discussions were misleading because the agency compared initial prices to historical prices for the ISAP III contract and then compared final pricing to the IGCE during its final price evaluation. Comments and Supp. Protest at 8. The protester also contends that this change in comparison tools required the agency to reopen discussions. *Id.* at 9.

The agency replies that the price comparison tools that ICE used were permitted by FAR 15.404-1(b)(2) and whether it relied on historical ISAP III prices or the IGCE, there was no need to reopen discussions because CoreCivic's pricing was too low by either standard. Supp. Memorandum of Law (MOL) at 3-5. In support, the agency explains that the difference between relying on historical prices versus the IGCE is "matter of cents." *Id.* at 6. Additionally, the agency asserts that the protester has failed to show that the agency's use of different tools had any material impact on the award decision because the CLINs identified as understated during discussions, were also found unrealistically low in the final price evaluation and award decision. *Id.*

In response, CoreCivic contends that the agency's discussions, conveying that CoreCivic's pricing was low "based on historical prices," were rendered inaccurate when the agency changed its comparison point from ISAP III (historical) pricing to the IGCE. Supp. Comments at 10-11. CoreCivic contends that this difference between sources is significant because CoreCivic could allegedly estimate and derive ISAP III pricing from publicly available sources, but could not determine estimated prices from the agency's internal, unpublished IGCE. *Id.* at 11.

We find no basis to sustain the protest. CoreCivic has not demonstrated that the agency's discussions were misleading. The record shows that the agency evaluated initial prices for reasonableness and balance using historical ISAP prices, found a number of CLINs to be understated, and advised the protester of this information. AR, Tab 10, Initial Price Evaluation at 1; Tab 13, CoreCivic Discussion at 4-5. The record also shows that the agency subsequently amended the RFP to include an evaluation for price realism, permitted revised pricing, and after evaluating revised proposals using the IGCE, concluded that the protester's price was unrealistically low. AR, Tab 22, Final Price Evaluation at 15.

To the extent CoreCivic contends that a comparison of prices using the IGCE is substantively distinguishable from using ISAP III pricing, we find this argument relies on a distinction without a difference. In this regard, we note that the contracting officer states, and the protester does not challenge, that the IGCE was developed using historical prices paid under ISAP III. See COS at 2. Further, the agency explains, and the protester does not rebut, that the difference between ISAP III pricing and the IGCE was not significant and instead merely a "matter of cents." Supp. MOL at 6. Thus, the protester has not shown that the agency either failed to lead the protester into the area of its proposal requiring revision, *i.e.*, significantly understated prices, or, whether relying on historical pricing or the IGCE, that the agency unreasonably found the protester's pricing to be too low.<sup>5</sup>

Next, the protester contends that the agency failed to raise its true concerns during discussions by not advising CoreCivic that its total price was unrealistic and certain CLINs presented risk. Comments and Supp. Protest at 9. The crux of the protester's argument is that the agency's discussions--which were conducted after evaluating proposals for price reasonableness--did not raise the realism concerns identified in the agency's final price evaluation. We find this allegation unavailing. At the point when the agency issued discussion questions, the solicitation did not contemplate a price realism evaluation; instead, proposals were evaluated for reasonableness. AR, Tab 23, SSD at 5. After discussions and receiving revised proposals, the agency amended the solicitation to add a price realism evaluation, requested revised pricing, and evaluated proposals for price realism. *Id.* at 5-6. In this regard, proposals were evaluated for realism only when the agency conducted its final price evaluation, *i.e.*, after discussions. Thus, because the concerns the protester identifies in the final price evaluation arose based on the agency's price realism evaluation, these concerns did not exist during the earlier-conducted discussions, and therefore could not have been raised with the protester. As a result, we deny this basis of protest.

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<sup>5</sup> To the extent the protester suggests the agency's reliance on an unpublished IGCE was unreasonable, the protester has not cited, and we are unaware of, any requirement that an agency disclose to potential offerors the IGCE or any other pricing information on which an agency intends to rely to evaluate prices.

Additionally, the protester contends that the agency's discussions failed to comply with FAR 15.307, requiring an agency to request final proposal revisions (FPR) at the conclusion of discussions. The protester also contends that if given the opportunity to submit FPRs, it would have revised its proposal to be "more competitive." Protest at 8-9. Our Office has consistently stated that we will not sustain a protest unless the protester demonstrates competitive prejudice--that, but for the agency's actions, it would have a substantial chance of receiving the award. See *Priority One Servs., Inc.*, B-415201.2, B-415201.3, Apr. 13, 2018, 2018 CPD ¶ 182 at 11.

The protester's argument does not meet this burden. Regardless of whether the agency labeled its request as a call for FPRs, the record shows that CoreCivic had the opportunity to revise its price in response to amendments 4 and 5. AR, Tab 14, Sept. 19, 2020 Letter at 2; RFP at 1. Specifically, in response to amendment 5, CoreCivic was required to submit a revised pricing template. RFP at 1; AR, Tab 15, Emails between ICE and CoreCivic at 40, 48-49. Nevertheless, CoreCivic chose not to revise its price based upon its business decision to perform the work with decreased profits. AR, Tab 17, CoreCivic Dec. 17, 2020 Response at 1 (stating "we stand by the numbers we have proposed"). The record also shows that the agency concluded that CoreCivic's final price was \$732,792,440 lower than the IGCE and \$611,340,357 lower than BI's. AR, Tab 23, SSD at 49. In these circumstances, where CoreCivic was already on notice that elements of its price were understated, had the opportunity to revise its pricing in response to amendment 5, chose not to revise its price, and the offerors' final prices were substantially different, CoreCivic's vague reference to making its proposal more competitive here is not sufficient to demonstrate prejudice.<sup>6</sup> A protester's general assertions that it would make unspecified proposal revisions do not establish prejudice. See, e.g., *Online Video Serv., Inc.*, B-403332, Oct. 15, 2010,

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<sup>6</sup> We note that the protester engaged in numerous contacts with the agency throughout the procurement and prior to award. In none of these communications did the protester inquire as to whether the agency would request FPRs. For example, on January 17, a month after submitting its December 17 revised proposal, the protester contacted the agency to inquire as to whether award would be made in January, as indicated in amendment 5, and was informed that the agency anticipated award in February. AR, Tab 15, Emails between ICE and CoreCivic at 48. Additionally, on February 24, the protester again inquired whether the agency still anticipated making award in February. *Id.* at 50. The agency advised that it anticipated award in March and requested that CoreCivic extend its price proposal through March 31. *Id.* The protester agreed to extend its price and did not raise any additional inquiries with the agency. *Id.* In our view, the protester's contemporaneous actions--repeatedly contacting the agency regarding award without also inquiring as to the submission of FPRs and agreeing to extend its price until March 31--conflict with its litigation position that it was expecting the agency to request FPRs prior to award. The integrity of the protest process, however, does not permit a protester to espouse one interpretation or position during the procurement, and then argue during a protest that the interpretation or position is unreasonable or otherwise improper. *Quotient, Inc.*, B-416473.6, B-416473.7, July 30, 2019, 2019 CPD ¶ 281 at 7.

2010 CPD ¶ 244 at 2 (protester's failure to provide specific information or explanation as to how it would lower its price, which was twice as high as the awardee's, fails to show prejudice); *General Dynamics C4 Sys., Inc.*, B-406965, B-406965.2, Oct. 9, 2012, 2012 CPD ¶ 285 at 9-10 (protester's failure to explain how proposal change would meet required specification fails to show prejudice).

The protester also challenges the agency's price discussions asserting that the agency made material changes to the solicitation through amendment 5, and did not allow CoreCivic to revise its proposal. Protest at 9. CoreCivic contends that it was prejudiced by the agency's actions because "[w]ith the awareness that it could be rejected from the competition for unrealistic prices, CoreCivic could have increased its proposed price to avoid being removed from consideration for its business decision to perform the work with decreased profits." *Id.* at 10.

The protester's assertion that it was unaware that it could be rejected for unrealistic prices is contradicted by the record. Here, amendment 5 advised that pricing proposed in the pricing template would be used as the contract price for evaluation purposes. RFP at 72. Additionally, the amendment explicitly stated that unrealistically low pricing could indicate an inability to understand requirements and a high-risk approach to contract performance, and result in a proposal being determined unacceptable. RFP at 1, 79. In recognition of this change, the offerors were permitted to revise their pricing after receipt of amendment 5. The protester's response confirmed receipt of amendment 5. AR, Tab 17, CoreCivic Dec. 17, 2020 Response at 1-2. Moreover, CoreCivic revised its proposal by offering a performance bond "[i]n an effort to assist in determining the level of risk [associated with] accepting CoreCivic's proposal," and to shift any perceived risk of contract requirements not being fulfilled from ICE to CoreCivic's surety company. *Id.* at 1. In offering the performance bond, CoreCivic represented that it was "happy to take this additional step of mitigating any perceived risk with [its] proposal." *Id.*

Additionally, CoreCivic acknowledges that its response to amendment 5 did not increase its pricing and instead stated "we stand by the numbers we have proposed." *Id.*; Protest at 9. These facts, when taken together, make clear that the protester knew that its proposal could be rejected for unrealistic prices, understood that risk would factor into the agency's evaluation, and attempted to mitigate any risk associated with its proposal and approach by offering a performance bond rather than increasing its price. Thus, CoreCivic's assertion that it was unaware that its proposal could be rejected for proposing an unrealistically low price is not supported by the record.

For the reasons outlined above, we find no basis to question the agency's conduct of discussions.

#### Price Realism

Finally, CoreCivic challenges the agency's price realism evaluation. The protester asserts that ICE mechanically compared prices to the IGCE and historical prices.



Protest at 10. CoreCivic also contends that the agency failed to consider its proposed approach to operate at reduced profit margins and provide a performance bond to ensure no risk to the agency. *Id.*

In response, the agency explains that it reasonably concluded that CoreCivic's price was unrealistic. In this regard, ICE states that the \$611 million difference between CoreCivic's price and BI's and the \$732 million difference between CoreCivic's price and the IGCE, made CoreCivic's price unrealistic as it presented risk to successful performance of the tasks in the statement of work. MOL at 20; AR, Tab 22, Final Price Evaluation at 2. ICE also states that it performed a technical crosswalk, comparing CoreCivic's price to its technical proposal, and found that multiple areas of the protester's price did not match the firm's technical proposal. *Id.* at 10; *id.* at 9-13. For example, the protester's staffing plan proposed three separate manager positions for five separate regions; however, for each position, the protester offered pricing for only two of the five regions. MOL at 22. The agency determined that this inconsistency presented a risk because it demonstrated a lack of understanding of the requirement. *Id.* (citing AR, Tab 22, Final Price Evaluation at 13).

Additionally, the agency states that it found CoreCivic's price too low based on proposed pricing for eight CLINs, including CLIN X001, the contract management CLIN under which direct labor costs should be proposed, and the enrollment CLINs. MOL at 22-29. The agency's response fully explains the basis upon which it determined that the protester's approach to performing each CLIN presented risk to the government. *Id.* For example, although the protester's technical proposal proposed to utilize [DELETED] program managers under the CLIN for direct labor, CLIN X001, the protester did not include any prices in its CLIN X001 submission for these positions. MOL at 24-25 (citing AR, Tab 21, Technical Price Crosswalk at 8). The agency noted that CLIN X001 functions as the monthly cost for contract management, rather than guaranteed minimum revenue, as the protester assumed, and to the extent direct labor prices were included in other CLINs, this created risk that CoreCivic may not be able to recoup the costs necessary to keep the [DELETED] program managers employed. *Id.*

As relevant to the enrollment CLINs, the agency found that CoreCivic proposed profit rates between negative 53 and negative 68 percent. MOL at 26 (citing AR Tab 18, CoreCivic Pricing Template at Tab 2d, Lines 20-22; Column R). The agency recalculated the profit rate at zero percent and concluded that CoreCivic would need to make up \$31 million in other CLINs to break even in performing the enrollment CLINs, which created significant risk to the government. *Id.* at 26-27 (citing AR, Tab 22, Final Price Evaluation at 15).

The protester substantively addresses only the agency's response regarding the enrollment CLINs by arguing that the agency's evaluation failed to consider CoreCivic's unique pricing strategy to operate at little to no profit. Comments and Supp. Protest at 12. Specifically, the protester argues that the agency did not analyze whether CoreCivic's pricing in related CLINs could support the reduced profits in the enrollment CLINs. *Id.* In support of this argument, CoreCivic represents that its October 3

proposal indicated “[b]y making slight adjustments to the prices for other services provided to the participant, CoreCivic could easily make up the [DELETED]% of the contract value that the Agency thought was missing from the enrollment CLINs.” *Id.*

Although agencies are required to analyze price or cost in negotiated contracts to ensure that proposed prices are fair and reasonable, where, as here, the award of a fixed-price contract is contemplated, a proposal’s price realism is not ordinarily considered, since a fixed-price contract places the risk and responsibility for contract costs and resulting profit or loss on the contractor. *International Outsourcing Serv.*, B-295959, May 25, 2006, 2006 CPD ¶ 6 at 7. However, an agency may, at its discretion, provide for the use of a price realism analysis in a solicitation for the award of a fixed-price contract to assess the risk in an offeror’s approach. *WinStar Fed. Servs.*, B-284617 *et al.*, May 17, 2000, 2000 CPD ¶ 92 at 9.

The FAR identifies a number of price analysis techniques that may be used to determine whether prices are reasonable and realistic, including analysis of pricing information provided by the offeror. FAR 15.404-1(b)(2). The depth of an agency’s realism analysis is a matter within the sound exercise of the agency’s discretion, which we will review only to determine whether it was reasonable and consistent with the terms of the solicitation. *Equa Sols., Inc.*, B-409848.2, B-409848.3, Nov. 20, 2014, 2014 CPD ¶ 354 at 8. 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.

We find no basis to sustain the protest. While the protester represents in its pleadings that it provided further explanations about how its pricing strategy showed how related CLINs could support the reduced profit in enrollment CLINs, such detailed explanations were not included in the actual CoreCivic proposal. See Comments & Supp. Protest at 11; *cf.* AR, Tab 16, CoreCivic October 3, 2019 Response at 69. Additionally, we see no basis to find unreasonable the agency’s conclusion that CoreCivic’s pricing strategy would require at least \$31 million in revenues from other CLINs to break even on the enrollment CLINs. We also find no basis to challenge the agency’s conclusion that the protester’s negative profit rate for the enrollment CLINs presented significant risk to the government.

Additionally, where, as here, an agency provides a detailed response to a protester’s assertions and the protester fails to rebut the agency’s arguments in its comments, the protester fails to provide us with a basis to conclude that the agency’s position with respect to the issues in question is unreasonable, and as a result, the protester abandons those assertions. *Safeguard Base Operations, LLC*, B-415588.6, B-415588.7, Dec. 14, 2018, 2018 CPD ¶ 426 at 4. Since CoreCivic did not substantively address the agency’s remaining responses regarding the realism of CoreCivic’s total price, the CLINs found to be unrealistically low, the issues identified in the technical crosswalk, and the risk inherent in the protester’s pricing strategy, we find that these arguments are abandoned, and do not address them further. Accordingly,

our Office has no basis to object to the agency's conclusions that CoreCivic's price was unrealistic.<sup>7</sup>

Based on our conclusion above, we need not address the protester's challenges to the evaluation of its technical proposal. In this regard, even if we accepted the protester's technical challenges as true, because CoreCivic's price was reasonably found to be unrealistic, and its price proposal was unacceptable, CoreCivic cannot show prejudice from any error in the agency's technical assessment. See e.g., *DynCorp Int'l LLC*, B-411465, B-411465.2, Aug. 4, 2015, 2015 CPD ¶ 228 at 13. An unacceptable proposal cannot form the basis for award. See, e.g., *Mission Essential Personnel, LLC*, B-408788, Dec. 6, 2013, 2013 CPD ¶ 285 at 11.

The protest is denied.

Thomas H. Armstrong  
General Counsel

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<sup>7</sup> The protester's contention that the agency did not evaluate CoreCivic's pricing strategy, which included a commitment to provide a performance bond for risk, is not supported by the record. The SSA was aware of the performance bond and concluded that CoreCivic's price was unrealistic. AR, Tab 23, SSD at 48. We have found that the risk of poor performance when a contractor is forced to provide services at little or no profit under a fixed-price contract is a legitimate concern that can be considered under a price realism evaluation. *International Outsourcing Serv.*, *supra* at 9. In our view, the protester has not shown, and we find no reason to conclude, that the agency is required to disregard its findings that CoreCivic's price was unrealistic or presented significant risk simply because the protester offered a performance bond.