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Decision

Matter of: Janus Global Operations, LLC

File: B-418980; B-418980.2; B-418980.3

Date: November 10, 2020

Terry L. Elling, Esq., Gregory R. Hallmark, Esq., and Kelsey M. Hayes, Esq., Holland & Knight LLP, for the protester.

Daniel Strouse, Esq., and John O'Brien, Esq., Cordatis Law LLP, for Triple Canopy, Inc., the intervenor.

Alexa B. Bryan, Esq., and Scott A. Johnson, Esq., Department of the Army, for the agency.

Glenn G. Wolcott, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is denied where agency's evaluations under each of the evaluation factors, along with its best-value tradeoff determination, were reasonable and consistent with the solicitation requirements and the stated evaluation criteria.

DECISION

Janus Global Operations, LLC, of Lenoir City, Tennessee, protests the Department of the Army's award of a task order to Triple Canopy, Inc., of Herndon, Virginia, pursuant to a task order request for proposals (TORP) issued under indefinite-delivery indefinite-quantity (IDIQ) contracts for security support services that were previously awarded by the Army.¹ Janus primarily complains that the agency's best-value tradeoff determination was improper; additionally, Janus protests the agency's evaluation under the technical, price, and past performance evaluation factors.

We deny the protest.

¹ The agency did not assign an identification number to the solicitation. The requirement was competed under IDIQ contracts held by five contractors, including Janus (contract No. W52P1J-19-D-0002) and Triple Canopy (contract No. W52P1J-19-D-0005).

BACKGROUND

On February 6, 2020, the agency issued the solicitation, seeking proposals to provide security support services in Kuwait.² The solicitation contemplated award of a fixed-price contract for a 1-year base period and three 1-year option periods, and provided that the source selection decision would be based on a best-value tradeoff between the following evaluation factors: technical,³ past performance,⁴ and price.⁵ The solicitation provided that the technical factor was significantly more important than past performance, and that past performance was more important than price. AR, Tab 30, TORP § M at 1-2.

On April 29, proposals were submitted by three offerors, including Janus and Triple Canopy. Following the agency's evaluation of initial proposals, Janus's proposal was rated as either marginal or unacceptable under each of the three technical evaluation subfactors.⁶ AR, Tab 61, Initial Evaluation at 3-9. Thereafter, the agency conducted

² The solicitation's performance work statement (PWS) provides that "The Contractor shall support DOD [Department of Defense] by aiding in the coordination of planning and execution of armed/unarmed security operations throughout the Area Support Group-Kuwait Area of Responsibility," elaborating that the contractor will "protect DOD personnel, facilities, information and material resources against criminal trespass, terrorism, and other unlawful activities." Agency Report (AR), Tab 31, PWS at 2. The solicitation states that "[c]urrent locations of performance shall be Camp Arifjan, and Camp Buehring, but other USG [U.S. government] locations in Kuwait could be included based on mission requirements." *Id.*

³ Under the technical evaluation factor, the solicitation established three equally-weighted subfactors: surge capability plan; personnel management plan; and logistics management plan. AR, Tab 30, TORP § M at 4. To be eligible for consideration, offerors were also required to provide proof of sponsorship regarding their authority to operate/conduct business in Kuwait. *Id.* at 1. Both Janus and Triple Canopy complied with this requirement.

⁴ Offerors were required to provide past performance information on "up to three recent and relevant" contracts in which the offeror was either the prime contractor or subcontractor. AR, Tab 29, TORP § L at 6-7. Offerors were further required to submit information regarding any adverse performance under their past performance references. *Id.*

⁵ With regard to price, offerors were required to populate a price matrix that was provided with the solicitation. See AR, Tab 33, Price Matrix.

⁶ The solicitation defined a marginal rating as "not demonstrat[ing] an adequate approach" and an unacceptable rating as "not meet[ing the] requirements of the solicitation," and further provided that a final rating of marginal or unacceptable in any

discussions with the offerors, and final proposal revisions were submitted on June 4.⁷ Following the agency’s evaluation of final proposals, Janus’s and Triple Canopy’s proposals were rated as follows:⁸

	Janus	Triple Canopy
Technical	Acceptable	Outstanding
Surge Capability	Acceptable	Good
Personnel Mgmt. Plan	Good	Good
Logistics Mgmt. Plan	Acceptable	Outstanding
Past Performance	Satisfactory Confidence	Satisfactory Confidence
Price	\$142,269,198	\$198,100,081

Contracting Officer’s Statement and Memorandum of Law (COS/MOL), Sept. 4, 2020, at 13; AR, Tab 70, Task Order Decision Document (TODD) at 6.

In evaluating Triple Canopy’s proposal under the most important evaluation factor, technical, the agency’s technical evaluation team (TET) identified multiple strengths and one significant strength.⁹ For example, in assessing a strength under the surge

factor or subfactor would render the proposal ineligible for award. AR, Tab 30, TORP § M at 2-3.

⁷ Triple Canopy advised the agency that its initial proposal would remain valid as its final revised proposal. AR, Tab 60, Email from Triple Canopy to Agency, June 1, 2020.

⁸ Under the technical evaluation factor, the agency assigned ratings of outstanding, good, acceptable, marginal, or unacceptable. AR, Tab 30, TORP § M at 3. The solicitation defined: an acceptable rating as applicable to a proposal that “meets requirements,” “indicates an adequate approach,” and a risk of unsuccessful performance “no worse than moderate”; a good rating as applicable to a proposal with “a thorough approach,” “contains at least one strength,” and performance risk is “low to moderate”; and an outstanding rating as applicable to a proposal with an “exceptional approach,” “contains multiple strengths,” and performance risk is “low.” *Id.* Under the past performance factor, the agency assigned ratings of substantial confidence, satisfactory confidence, limited confidence, no confidence, and neutral confidence. *Id.* A satisfactory confidence rating was defined as applicable where, based on the offeror’s past performance record, the agency “has a reasonable expectation” of successful contract performance, while a substantial confidence rating was assigned where the agency “has a high expectation” of successful performance. *Id.* at 6.

⁹ The solicitation defined a strength as an aspect of a proposal that “has merit or exceeds specified performance or capability requirements in a way that will be advantageous to the Government,” and defined a significant strength as an aspect of a proposal that “has appreciable merit or appreciably exceeds specified performance or capability requirements in a way that will be appreciably advantageous to the Government.” AR, Tab 30, TORP § M at 3.

capability subfactor,¹⁰ the TET noted that Triple Canopy: “has a decade of experience working security in Kuwait”; “requires [redacted]”; “participates in [redacted]”; “maintains a [redacted]”; “is prepared to [redacted]”; “has a plan to [redacted]”; “has accounted for providing access to [redacted], providing [redacted]”; and “[discussed] how they will [redacted].” AR, Tab 63, TET Evaluation Report (Triple Canopy) at 4. Overall the TET concluded that Triple Canopy “demonstrates strength in the processes and procedures it proposes and has shown great familiarity with current requirements thus significantly reducing risk.” *Id.*

By way of another example, the TET assigned a significant strength to Triple Canopy’s proposal under the logistics management subfactor,¹¹ stating:

[Triple Canopy] identified additional risks [redacted]. Additional risks identified included [redacted]. [Triple Canopy] addresses potential logistical risks and how they plan to mitigate them. . . . [Triple Canopy’s proposal] details a good understanding to the challenges that could inhibit [redacted] and outlines [redacted] risk mitigation measures.

Id. at 9.

The agency notes that, in its evaluation of final proposal revisions, it “reevaluated the strength and significant strength identified during initial evaluations” and “reviewed the definitions of the adjectival ratings to ensure they were being applied correctly.” *Id.* at 1 n.1, 10. Based on that review, the agency determined that Triple Canopy’s technical rating should be outstanding, rather than the good rating its initial proposal was assigned.

In evaluating Janus’s final revised proposal, the TET concluded that Janus had addressed the agency’s various concerns that led to technical subfactor ratings of marginal and unacceptable in Janus’s initial proposal. Nonetheless, the TET identified only a single strength in Janus’s technical proposal, noting that Janus “uses a variety of

¹⁰ The solicitation provided that, under this subfactor, each offeror’s proposal would be evaluated with regard to maintaining surge capability “of up to 96 hours in the event Force Protection Condition (FPCON) is elevated to FPCON Delta.” AR, Tab 30, TORP § M at 4. There are five FPCON levels--Normal, Alpha, Bravo, Charlie, and Delta; the levels increase from the lowest condition at Normal to the most protective, Delta. FPCON Delta applies when a terrorist attack has occurred or when intelligence has been received that terrorist action is imminent. Protest at 6 n.4.

¹¹ The solicitation provided that, under this subfactor, each offeror’s proposal would be evaluated with regard to “timely mobiliz[ation of] a workforce, required equipment, and routine supplies on a daily basis to Camp Arifjan and Camp Buehring from housing locations in Kuwait.” AR, Tab 29, TORP § L at 5.

tools to incentivize performance and retain individuals,” “maintains [redacted],” and has “an annual retention percentage of [redacted].” AR, Tab 70, TODD at 7.

In evaluating the proposals under the past performance factor, the agency found that there were examples of both positive and negative past performance for both Janus and Triple Canopy;¹² accordingly, both proposals received ratings of satisfactory confidence, rather than substantial confidence. The selection official concluded that Janus’s and Triple Canopy’s proposals were “essentially equal” under this factor and stated that past performance was not a discriminating factor. TODD at 14.

In evaluating the offerors’ proposed prices, the agency applied the techniques identified in Federal Acquisition Regulation (FAR) 15.404-1. See AR, Tab 30, TORP § M at 7. Specifically, the agency compared the proposed prices to each other by calculating the dollar value and percentage variance between the proposed prices, and also compared the prices to an independent government cost estimate (IGCE).¹³ AR, Tab 65, Price Analysis Report at 3-5. The agency concluded that Janus’s price (\$142,269,198) and Triple Canopy’s price (\$198,100,081) were both fair and reasonable. AR, Tab 70, TODD at 4-5.

On July 23, 2020, the task order decision official selected Triple Canopy for award. In documenting the selection decision, the selection official: noted that Triple Canopy’s technical proposal contained five strengths and one significant strength, while Janus’s technical proposal reflected only a single strength; discussed the various strengths/significant strength of each offeror’s proposal; and compared Triple Canopy’s and Janus’s proposals. Among other things, the TODD stated:

Offeror B [Janus] versus Offeror C [Triple Canopy]

Technical Factor. The Technical factor is the most important factor; [Janus] received an overall adjectival Technical rating of “Acceptable” and [Triple Canopy] received an overall adjectival Technical rating of “Outstanding.”

- **Surge Capability:** . . . [Janus’s] proposal for this sub-factor demonstrated an adequate approach and understanding of the requirement and did not receive any significant strengths, strengths, weaknesses, or deficiencies. [Triple Canopy’s proposal] received three Strengths for its surge processes and procedures; surge capabilities and experience; and ability to sustain or extend a surge beyond 96 hours. . . . [Triple Canopy] states its guards [redacted]. [Triple Canopy] stated it would [redacted]. [Triple

¹² As noted above, the solicitation required offerors to submit information regarding adverse past performance. AR, Tab 29, TORP § L at 6-7.

¹³ The agency states that its IGCE reflected historical cost/price information for the base performance period, with a 3 percent escalation factor applied to each option period. AR, Tab 70, TODD at 4.

Canopy] demonstrated its ability to quickly adapt to complex and challenging real world events as well as the ability to effectively sustain or extend a surge past the 96 hour mark[.]

- **Personnel Management Plan:** [Janus] and [Triple Canopy] both received a rating of “Good” for this sub-factor. [Janus] received one Strength for its Retention Plan [in] which [Janus] stated it uses a variety of tools to incentivize performance and retain individuals such as [redacted]. [Janus] stated it maintains [redacted]. The contracts it presented show an annual retention percentage of [redacted]. [Triple Canopy] received one Strength for [redacted].
- **Logistics Management Plan:** [Janus] received a rating of “Acceptable” for this sub-factor. [Triple Canopy] received a rating of “Outstanding” for this sub-factor. [Janus’s] proposal for this sub-factor demonstrated an adequate approach and understanding of the requirement and did not receive any significant strengths, strengths, weaknesses, or deficiencies. [Triple Canopy] received one Significant Strength for its risk mitigation and explained how it would mitigate risks associated with logistical activities. [Triple Canopy] also identified additional risks than what were specified in the PWS and how it plans to mitigate them. [Triple Canopy] received one Strength for its established subcontractor management process and states it partners with three subcontractors to meet the requirements of [TORP section] L.5.4, which reduces the risk to the [government] by avoiding a single point-of-failure on the program.

I have reviewed the Technical proposals and underlying descriptions of the strengths identified in [Janus’s] and [Triple Canopy’s] proposals and concur with the evaluation team’s determination. [Triple Canopy’s] Technical proposal is superior to [Janus’s].

Past Performance Factor.

* * * * *

Based on my review of the Past Performance records of [Janus] and [Triple Canopy] I find the Offerors to be essentially equal in the Past Performance factor. I do not find Past Performance to be a discriminating factor.

Price. [Janus’s] Total Evaluated Price is \$142,269,198.00 and [Triple Canopy’s] Total Evaluated Price is \$198,100,081.57. [Janus’s] Total Evaluated Price is \$55,830,883.57 less than [Triple Canopy’s] Total Evaluated Price. The price proposals for both Offerors were determined fair and reasonable.

Best Value Tradeoff For the reasons explained above, after considering the substantive merit of both proposals, I consider [Triple Canopy’s] proposal to be superior to [Janus’s]. As the Request for Task Order Proposal notes, the

Technical Factor is the most important factor . . . [Triple Canopy's] proposal offers many advantages over [Janus's] proposal and merits paying a 39.2% premium. Accordingly, I conclude that [Triple Canopy's] proposal represents a better value to the Government than [Janus's proposal].

AR, Tab 70, TODD at 12-14.

Thereafter, Janus was notified of the agency's source selection decision. Following a debriefing, Janus filed this protest.¹⁴

DISCUSSION

Janus's protest primarily challenges the best-value tradeoff determination. The protester also challenges the agency's evaluation under the technical, price, and past performance factors. As discussed below, we find no basis to sustain the protest.

Best-Value Tradeoff Determination

First, Janus challenges the agency's best-value determination, alleging various flaws. Specifically, Janus asserts that the agency "made no attempt" to justify selection of Triple Canopy's higher-priced proposal, complaining that "[t]here is no explanation in the TODD of why Triple Canopy's proposal merits paying its 39.2% higher price." Protest at 13. Similarly, Janus maintains that "[t]here is no discussion of particular advantages of Triple Canopy's proposal," complaining that the agency's selection official "effectively disregarded Price as an evaluation factor." *Id.* Finally, Janus argues that the agency failed to adequately document the selection decision, and asserts that the decision did not represent the selection official's independent determination. *Id.* at 14-16.

The agency responds, generally, that Janus's assertions "ignore the clear facts demonstrated by the record." COS/MOL, Sept. 4, 2020, at 16. More specifically, the agency points out that the selection official performed, and documented, a direct comparison of Janus's and Triple Canopy's proposals under each evaluation factor and subfactor. Further, with regard to the selection official's consideration of the competing proposals under the most important factor, technical, the TODD: identified multiple aspects of Triple Canopy's proposal (with regard to surge capability and logistics management) that were considered materially superior to Janus's proposal; specifically discussed the benefits of Triple Canopy's various evaluated strengths and its significant strength; and noted that Janus's proposal contained only a single strength. *Id.* at 18.

The agency further points out that, after considering--and documenting--her awareness of the relative merits and prices of the competing proposals, the selection official

¹⁴ The task order has an expected value exceeding \$25 million, and is therefore within our jurisdiction to review protests related to the issuance of orders under multiple-award IDIQ contracts issued under the authority provided by Title 10 of the United States Code. 10 U.S.C. 2304c(e)(1)(B).

reasonably determined that Triple Canopy's 39.2 % price premium was warranted. *Id.* Finally, the agency notes that the TODD expressly states that the selection official reviewed the proposals, the solicitation's evaluation criteria, and the evaluation reports. On this record, the agency maintains that the best-value determination was reasonable, sufficiently documented, and reflected the selection official's independent judgment. We agree.

Source selection officials in best-value procurements have broad discretion in making price/technical tradeoffs, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the solicitation's evaluation criteria. *PricewaterhouseCoopers LLP, IBM U.S. Federal*, B-409885, *et al.* Sept. 5, 2014, 2014 CPD ¶ 289 at 20. More specifically, an agency may select a higher-priced proposal that has been rated technically superior to a lower-priced proposal where the award decision establishes a reasonable basis for concluding that the technical superiority warrants the price premium. *See, e.g., DKW Communications, Inc.*, B-411182, B-411182.2, June 9, 2015, 2015 CPD ¶ 178 at 5. In this context, the source selection decision must be adequately documented and represent the selection official's independent judgment. The requirement for adequate documentation is met where the record establishes that the selection official was aware of the relative merits and costs of the competing proposals, *Wyle Labs., Inc.*, B-407784, Feb. 19, 2013, 2013 CPD ¶ 63 at 11, and the requirement for independence is met by a selection official's representation that he/she reviewed and concurred with the underlying evaluations. *Raytheon Company*, B-416211 *et al.*, July 10, 2018, 2018 CPD ¶ 262 at 27.

Here, based on our review of the record, we reject Janus's assertions that the tradeoff determination was unreasonable, inadequately documented, or failed to reflect the selection official's independent judgment. As discussed above, the TODD discussed in detail the relative merits of the competing proposals under the technical evaluation factor--which the solicitation established as being significantly more important than any other factor. Among other things, the TODD specifically referenced Triple Canopy's technical superiority--and the associated benefits to the agency--with regard to surge capability and logistics management. Janus's assertions that the agency "made no attempt" to justify the tradeoff, provided "no discussion" of Triple Canopy's advantages, and gave "no explanation" regarding the basis for selecting Triple Canopy's higher-priced proposal are without merit.

Further, there is no doubt that the selection official was aware of the relative costs associated with each proposal; to the extent Janus requests that GAO conclude that the magnitude of Triple Canopy's price premium rendered the tradeoff "facially deficient," Protest at 12, we decline to do so. As noted above, the solicitation placed offerors on notice that the technical evaluation factor was significantly more important than price and, as also noted above, selection officials have broad discretion with regard to cost/technical tradeoffs. Finally, here, the selection official established her independence by specifically stating that she had reviewed and concurred with the underlying evaluations. On this record, we find no merit in any of Janus's complaints challenging the agency's best-value tradeoff determination.

Technical Evaluation

Next, Janus challenges the agency's evaluation of the offerors' proposals under the technical evaluation factor. Among other things, Janus asserts that the agency miscalculated Triple Canopy's proposal under the personnel management subfactor. In this context, Janus complains that Triple Canopy's price matrix did not include an "operations center watch officer," asserting that this was a "position required by the PWS." Janus Comments/1st Supp. Protest, Sept. 14, 2020, at 6-7. Accordingly, Janus maintains that Triple Canopy's proposal should have been evaluated as technically unacceptable. *Id.* Janus also notes that Triple Canopy's total staffing was considerably lower than Janus's total staffing, and complains that the agency "failed to evaluate whether Triple Canopy can meet the Solicitation's requirements with only [redacted] personnel, considering Janus proposed [redacted] personnel." *Id.* at 8. Based on the agency's "failure" to use Janus's staffing as a benchmark, Janus asserts that the agency's "failure to evaluate the significantly different numbers of personnel each offeror proposed . . . was unreasonable." Janus Comments/2nd Supp. Protest, Sept. 29, 2020, at 19.

With regard to Janus's complaint that Triple Canopy failed to propose the "required" position of "operations center watch officer," the agency responds that Janus's protest misrepresents the solicitation requirements. Specifically, the agency states that offerors were required to provide a staffing plan demonstrating "the ability to provide 100% coverage at all positions identified **in the position table** in the PWS." See AR, Tab 29, TORP § L at 5 (emphasis added). The agency points out that the referenced PWS position table does not list "operations center watch officer." See AR, Tab 31, PWS at 40-43. Further, the agency explains that the matter of required positions--including an "operations center watch officer"--was specifically addressed in a solicitation amendment that incorporated offeror questions and agency answers. Specifically, the solicitation states:

Q. Shall contractors assume that each camp (Arifjan/Buehring) requires a Guard Site Manager, Guard Site Assistant Manager, Operations Center Chief, Operations Center Assistant Chief, **Operations Center Watch Officer**. . . ? None of these positions are referenced in the position table on page 37.

A. It is on the contractor to submit with its proposal how they will supervise their operations.

AR, Tab 25, Questions and Answers at Line 57 (emphasis added).

Accordingly, the agency states that, while the solicitation's price matrix listed various positions, including an "operations center watch officer"--for which offerors might, or

might not, propose applicable labor rates¹⁵--Janus was on notice that the PWS position table did not list all of the positions included on the price matrix. Accordingly, the agency maintains that Janus's assertion regarding the "required position" is without merit.

With regard to Janus's complaint that the agency failed to properly consider the total number of Triple Canopy's proposed staffing, the agency responds that it reasonably considered the adequacy of Triple Canopy's staffing based on the solicitation requirements--not by comparing the total quantity to Janus's proposed staffing. Specifically, the agency refers to the TET evaluation report regarding Triple Canopy's staffing, that included the following:

Appendix A [of Triple Canopy's proposal] is a detailed manning report that addresses staffing at Camp Arifjan and Camp Buehring and demonstrates the Offeror's ability to provide 100% coverage at all positions identified in the position table in the PWS. [Triple Canopy's] manning report includes a table of personnel proposed, utilizing [redacted], which describes how they provide every person not on call 24/7 an hour food break during their shift. Pages A1 and A2 include narrative supporting the Offeror[']s approach explaining the manning report. The tool [Triple Canopy] uses is called [redacted]. The [redacted] is the [redacted]. This approach to manning posts and positions defined in the PWS demonstrates a realistic understanding which is both adequate and feasible.

AR, Tab 63, TET Evaluation Report (Triple Canopy) at 7-8.

The agency further describes Triple Canopy's manning table as "incredibly thorough and detailed" with "detailed descriptions of exactly how Triple Canopy will use each person to perform the required functions." 1st Supp. COS/MOL, Sept. 23, 2020, at 15. In contrast, the agency describes Janus's manning report as part of its "bare-bones" proposal which "provides almost no detail, beyond the numbers of personnel performing each function." *Id.* Accordingly, the agency maintains that Janus's complaints regarding the agency's evaluation of Triple Canopy's proposed staffing merely reflect Janus's disagreement with the agency's evaluation.

Where a protest challenges an agency's technical evaluation, this Office will review the evaluation record to determine whether the agency's judgments were reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. *Rome Research Corp.*, B-291162, Nov. 20, 2002, 2002 CPD ¶ 209 at 4.

¹⁵ In this regard, Janus's reliance on the price matrix as a basis for identifying "required positions" is inconsistent with Janus's own price matrix--which proposed "\$0.00" for several positions. See AR Tab 54, Janus Price Matrix Base Period at lines 15, 18, and 19.

A protester's disagreement with an agency's judgments does not render the evaluation unreasonable. *Id.*

Based on our review of the record, we reject Janus's assertions regarding the agency's evaluation of Triple Canopy's proposed staffing. First, as noted above, the PWS table that identified "required positions" did not include an "operations center watch officer" and, accordingly, we reject Janus's assertion that Triple Canopy's proposal should have been evaluated as unacceptable for failing to include that position in its pricing matrix.¹⁶ Further, we have reviewed Triple Canopy's proposed manning report, along with the agency's evaluation of that report. Based on that review, we find nothing unreasonable in the agency's statement that it evaluated Triple Canopy's total proposed staffing on the basis of the PWS requirements (not on the basis of Janus's total proposed staffing), or in the statement that Triple Canopy's explanation of its staffing approach was "thorough and detailed" and contained "descriptions of exactly how Triple Canopy will use each person to perform the required functions." Accordingly, we find no merit in Janus's protest regarding the agency's evaluation of Triple Canopy's proposal under the personnel management subfactor.¹⁷

¹⁶ As noted above, Janus's own pricing matrix did not propose labor rates for several positions listed in the pricing matrix.

¹⁷ Janus also asserts that the agency's assignment of technical ratings for both offerors was otherwise flawed and/or reflected unequal treatment. For example, Janus complains that it was inappropriate to assign Triple Canopy an overall technical rating of outstanding because Triple Canopy received two technical subfactor ratings of good and only one subfactor rating of outstanding. The agency responds that, rather than performing a mechanical or mathematical averaging of the subfactor ratings, its evaluation considered the underlying strengths associated with Triple Canopy's proposal, and the final rating reflected the agency's consideration of the evaluated strengths. Janus also complains that it was unreasonable for the agency to change Triple Canopy's technical rating during its evaluation of final proposal revisions, since Triple Canopy did not submit any revisions to its initial proposal. The agency responds that, in its final evaluation of proposals, it considered the solicitation's definitions of the technical ratings, and reasonably determined that, based on the evaluated strengths and significant strength in Triple Canopy's proposal, a technical rating of outstanding was better aligned with the solicitation's definition of that rating. We have reviewed all of Janus's complaints regarding the agency's evaluation of the offerors' technical proposals and find no basis to sustain its protest.

Price Reasonableness Evaluation

Next, Janus challenges the agency's determination of reasonableness with regard to Triple Canopy's "facially unreasonable" high price. Protest at 18. In this context, Janus asserts that the agency failed to meaningfully compare the competing offerors' prices, and further argues that the agency's comparison of prices to the IGCE should be considered invalid because the IGCE was created several months before the solicitation was issued.¹⁸ *Id.* at 18-19.

The agency responds that it properly found both Janus's and Triple Canopy's prices to be fair and reasonable based on the agency's comparison of proposed prices to each other and to an IGCE. COS/MOL, Sept. 4, 2020, at 34; see TODD at 6. In making the price reasonableness determination, the agency first noted that it had received proposals from three offerors, which provided adequate price competition. The agency further notes that in making its reasonableness determination, it considered the price differences between the three offers,¹⁹ both in terms of dollar amounts and percentage variance, and was aware that Janus offered the lowest price, but was also the lowest-rated offer under the most important technical evaluation factor, with an overall rating of only acceptable; further, Triple Canopy's proposal offered the second-lowest price, with a technical rating of outstanding, that reflected five strengths and one significant strength. The agency notes that this comparison of offerors' prices to each other constituted an adequate and reasonable basis for its price reasonableness determination; yet, the agency took the additional step of comparing the proposed prices to its IGCE.²⁰ That comparison established that all of the offerors' prices were lower than the IGCE. COS/MOL, Sept. 4, 2020, at 38. With regard to Janus's assertion that the IGCE was invalid because it was prepared several months before the solicitation was issued, the agency notes that Janus has provided no explanation as to why this passage of time would render the IGCE invalid, stating that performance of security services in Kuwait has been ongoing for several years, and Janus has not provided any evidence regarding recent changes to the costs associated with those services. *Id.* at 38-39. Accordingly, the agency maintains that it reasonably and properly made its price reasonableness determination.

¹⁸ Because Triple Canopy was a subcontractor under the prior contract, Janus also maintains that the agency was precluded from considering the costs of Triple Canopy's prior performance in creating the IGCE, asserting that such reliance reflects "circular logic." Protest at 19. We have specifically rejected the assertion that an agency is precluded from considering an incumbent's costs in establishing an IGCE, *NCI Information Systems, Inc.*, B-405589, Nov. 23, 2011, 2011 CPD ¶ 269 at 4-6, and we similarly reject Janus's assertion here.

¹⁹ As noted above, Janus's price was \$142,269,198, and Triple Canopy's price was \$198,100,081. The third offeror's price was \$249,704,968. TODD at 6.

²⁰ The IGCE was \$439,197,782. AR, Tab 65 at 4.

Procuring agencies must condition the award of a contract upon a finding that the contract contains "fair and reasonable prices." FAR 15.402(a), 15.404-1(a); see *Crawford RealStreet Joint Venture*, B-415193.2, B-415193.3, Apr. 2, 2018, 2018 CPD ¶ 121 at 9. The purpose of a price reasonableness analysis is to prevent the government from paying too high a price for a contract. *Crawford RealStreet Joint Venture*, *supra*, at 9. An agency may use various price analysis techniques and procedures to ensure a fair and reasonable price, including the comparison of proposed prices to each other or to an independent government estimate. FAR 15.404-1(b)(2); *TransAtlantic Lines, LLC*, B-411846.3, B-411846.4, May 18, 2016, 2016 CPD ¶ 148 at 7. The manner and depth of an agency's price analysis is a matter committed to the discretion of the agency, and GAO will not disturb an agency's judgment in this regard, provided it is reasonable and consistent with the solicitation's evaluation criteria and applicable procurement statutes and regulations; this is particularly true in matters involving human life and safety. *Id.*; see *Aegis Defence Servs., Ltd.*, B-403226 *et al.*, Oct. 1, 2010, 2010 CPD ¶ 238 at 5; *Sig Sauer, Inc.*, B-402339.3, July 23, 2010, 2010 CPD ¶ 184 at 5-6.

Here, we find no basis to question the agency's price reasonableness determination. As noted above, the record establishes that the agency compared the prices received from the three competing offerors to each other, calculating both the dollar value differences and percentage variances between the prices. Additionally, the agency compared the proposed prices to an IGCE that the agency states was based on the historical costs for providing security services in Kuwait; we do not find persuasive any of Janus's various complaints challenging the validity of the IGCE. Accordingly, based on our review of the record for this procurement, which involves matters affecting human life and safety, we will not substitute our judgment for that of the agency, and we reject Janus's protest challenging the agency's conclusion that Triple Canopy proposed a fair and reasonable price.

Past Performance

Finally, Janus protests that the agency unreasonably assigned Triple Canopy a past performance rating of satisfactory confidence. Janus's Comments/1st Supp. Protest, Sept. 14, 2020, at 13. In making this assertion, Janus references various aspects of the past performance information Triple Canopy submitted with its proposal,²¹ complaining that Triple Canopy's past performance record is "flatly inconsistent" with a satisfactory confidence past performance rating. *Id.* at 14. Janus also protests that the agency engaged in unequal treatment when it similarly assigned Janus only a satisfactory confidence past performance rating, rather than a substantial confidence rating. In this context, Janus asserts that its past performance record "paints a markedly different

²¹ As noted above, the solicitation required offerors to submit adverse past performance information; both Janus and Triple Canopy submitted a significant amount of material in response to this solicitation requirement.

picture” than Triple Canopy’s, and maintains that the agency “failed to assess [p]ast [p]erformance in an even-handed manner.”²² *Id. at 15.*

The agency responds that its evaluation of both offerors’ proposals under the past performance factor was reasonable and equitable. Specifically, the agency states that, in reviewing both offerors’ past performance records, it found “past performance concerns of some significance” for each offeror, noting that these concerns were enough “to negatively affect the [selection official’s] confidence in the likelihood of successful performance.” 1st Supp. COS/MOL, Sept. 23, 2020, at 32-33. In considering the offerors’ adverse past performance information, the agency also considered the offerors’ explanations and descriptions of corrective actions taken. Based on its comprehensive review, the agency ultimately concluded that neither offeror’s proposal provided a basis for assignment of a substantial confidence past performance rating, specifically concluding that rather than a “high expectation” of successful contract performance (associated with a substantial confidence rating), the agency had only a “reasonable expectation” of successful performance (associated with a satisfactory confidence rating) for both offerors. In short, the agency maintains that its evaluation of both offerors’ proposals under the past performance evaluation factor was reasonable and equitable. We agree.

An agency’s evaluation of past performance is a matter of discretion and, by its very nature, is subjective; GAO will not substitute its judgment for reasonably based evaluation ratings, and an offeror’s disagreement with an agency’s evaluation judgments, without more, does not demonstrate that those judgments are unreasonable. *SIMMEC Training Solutions*, B-406819, Aug. 20, 2012, 2012 CPD ¶ 238 at 4; *MFM Lamey Group, LLC*, B-402377, Mar. 25, 2010, 2010 CPD ¶ 81 at 10. In assessing past performance, it is proper for the agency’s evaluation to reflect the totality of an offeror’s prior contract performance, and an agency may reasonably assign a satisfactory rating to an offeror despite the fact that portions of its prior performance have been unsatisfactory. *Aerostar Perma-Fix TRU Servs., LLC.*, B-411733, B-411733.4, Oct. 8, 2015, 2015 CPD ¶ 338 at 11.

Here, we have reviewed the record regarding both offerors’ past performance. As the agency states, the record contains both positive and negative past performance

²² Janus also asserts that the agency should have considered Triple Canopy’s past performance information as part of its risk assessment under the technical evaluation factor. Janus’s Comments/1st Supp. Protest, Sept. 14, 2020, at 9-11. The agency responds that such an evaluation approach would have been contrary to the terms of the solicitation, noting further that this Office has rejected that approach. 1st Supp. COS/MOL, Sept. 23, 2020, at 20-26; see *Raymond Assocs., LLC*, B-299496, B-299496.2, May 29, 2007, 2007 CPD ¶ 107 at 5-6. We reject Janus’s assertion that the agency should have considered past performance information in evaluating proposals under the technical evaluation factor.

information for both offerors. While Janus effectively requests that GAO conduct our own past performance evaluation, and apply our own subjective judgment regarding the relative merits of the two offerors' past performance records, we decline to do so. Based on the record presented, we find no basis to question the agency's past performance evaluation.

The protest is denied.

Thomas H. Armstrong
General Counsel