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Decision

Matter of: ICF Incorporated, L.L.C.

File: B-419049.3; B-419049.4

Date: March 9, 2021

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Alexa B. Bryan, Esq., and Thomas Clark, Esq., Department of the Army, for the agency. Raymond Richards, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest alleging the awardee's proposal did not meet the solicitation's minimum requirements for key personnel security clearances is denied where the solicitation did not require active clearances until after task order award.
 2. Protest challenging the agency's evaluation of technical proposals is denied where the record confirms that the evaluation was reasonable, equal, and consistent with the solicitation's evaluation criteria.
 3. Protest challenging the agency's cost realism analysis is denied where the agency's evaluation of cost proposals was reasonable and in accordance with the solicitation.
 4. Protest challenging the award decision is denied where the agency's source selection decision was reasonable, consistent with the solicitation's evaluation criteria, and adequately documented.
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DECISION

ICF Incorporated, L.L.C. (ICF) of Fairfax, Virginia, protests the issuance of a task order to Leidos, Inc., of Reston, Virginia, under request for proposals (RFP) No. RFQ1422996, issued by the Department of the Army, Army Materiel Command (Army), for research, development, and deployment of capabilities to support Department of Defense imperatives for cyber operations and security. The protester

challenges the agency's evaluation of the offerors'¹ technical and cost proposals and the source selection decision.

We deny the protest.

The Army issued the RFP on April 8, 2020, using the procedures of Federal Acquisition Regulation (FAR) section 16.505, to holders of General Services Administration (GSA) Alliant II indefinite-delivery, indefinite-quantity (IDIQ) contracts. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 1; Agency Report (AR), Tab 4, Final Version of RFP (RFP) at 1, 5. The RFP contemplated the award of a cost-plus-fixed-fee task order with a base period of 1-year and four 1-year options. RFP at 2, 20. The purpose of the RFP was to acquire services to address "today's cyber threats by designing and deploying game-changing cyber defense capabilities that allow organizations to defend better, react faster, coordinate rapidly, prioritize efforts, and respond smarter to security events, increased risks, and operational directives." *Id.* at 1.

The RFP advised that proposals would be evaluated on the basis of three factors: (1) technical, (2) small business participation, and (3) cost. *Id.* at 20. The small business participation factor was to be evaluated on an acceptable/unacceptable basis. *Id.* at 20, 22. For purposes of award, the technical factor was "more important" than cost. *Id.* at 20.

The technical factor was comprised of three equally-weighted elements. *Id.* at 5. Under element 1, technical understanding, offerors were to address the requirements detailed in the performance work statement (PWS), and address four listed scenarios. *Id.* at 5-9. Under element 2, implementation plan, offerors were to submit a master plan demonstrating the general context for the PWS requirements. *Id.* Under element 3, manpower level of effort, offerors were required to propose the exact labor categories and associated hours specified in the solicitation, without deviation. *Id.* at 10. Element 3 of the technical factor also covered key personnel qualifications. *Id.*

Under the technical factor, the RFP explained that proposals could be assessed strengths, weaknesses, or deficiencies. *Id.* at 21. The RFP defined a strength as an "aspect of an offeror's proposal that has merit or exceeds specified performance or capability requirements in a way that will be advantageous to the Government during contract performance." *Id.* The RFP defined a weakness as a "flaw in the proposal that increases the risk of unsuccessful contract performance." *Id.* The RFP defined a deficiency as a "material failure of a proposal to meet a Government requirement." *Id.* The RFP explained that proposals would be assessed an overall technical factor rating of exceeds requirements, meets requirements, or does not meet requirements. *Id.*

¹ Although firms that compete for task and delivery orders under multiple award IDIQ contracts are commonly referred to as "vendors," our decision uses the term "offeror" to be consistent with the record provided by the agency.

Proposals were required to receive an overall rating of meets requirements or exceeds requirements to be eligible for award. *Id.* at 20.

The Army received four proposals in response to the RFP by the due date of May 15. COS/MOL at 19. Of the four proposals, only ICF and Leidos submitted proposals that were found eligible for award under the technical factor. *Id.* The agency assigned ICF's proposal one strength under the technical understanding factor, and assigned Leidos's proposal one strength and two weaknesses under the technical understanding factor, and one strength under the implementation factor. AR, Tab 31, Initial Source Selection Decision Document (SSDD) at 9-11. Based on these findings, the agency assigned the following overall ratings:

	ICF	LEIDOS
Overall Technical Rating	Meets Requirements	Meets Requirements
Small Business Participation	Acceptable	Acceptable
Total Proposed Cost	\$171,923,988	\$137,137,093
Evaluated Cost	\$175,642,279	\$137,171,726

Id. at 6, 21. The agency concluded that Leidos's proposal offered a "more [beneficial] approach" at a lower evaluated cost as compared to ICF's proposal, and therefore selected Leidos's proposal for award. *Id.* at 23-24. On August 4, the Army notified ICF that its proposal was not selected for award. AR, Tab 33, Unsuccessful Offeror Letter.

ICF and ECS Federal, LLC (one of the offerors whose proposal was found ineligible for award) filed protests with our Office challenging the award to Leidos on August 25 and August 31, respectively. COS/MOL at 20. On September 16, the Army filed notices of corrective action with our Office in response to the protests, stating that it planned to reevaluate existing proposals and make a new award decision. *Id.* Based on the Army's proposed corrective action, our Office dismissed both protests as academic. *ICF Inc., LLC*, B-419049.2, Sept. 24, 2020 (unpublished decision); *ECS Fed., LLC*, B-419049, Sept. 23, 2020 (unpublished decision).

Upon reevaluation of proposals, the Army determined that the initial evaluation results for ICF's and Leidos's proposals under the cost factor and the small business participation factor remained unchanged. COS/MOL at 20. The agency's evaluation of the offerors' technical proposals remained unchanged with the exception of the manpower level of effort element. *Id.* at 20-21; AR, Tab 32, Updated SSDD at 6, 26. Under the manpower level of effort element, ICF's proposal and Leidos's proposal each earned two new strengths and no weaknesses. AR, Tab 32, Updated SSDD at 6, 26. Despite these changes, the agency did not revise the overall technical ratings of meets requirements. *Id.* The Army again selected Leidos's proposal for award, finding that it offered a "more beneficial approach" at a lower evaluated cost as compared to ICF's proposal. *Id.* at 28-29.

The Army advised ICF of the award to Leidos on November 5. AR, Tab 36, Unsuccessful Offeror letter. ICF requested and received a debriefing which concluded

on November 24. AR, Tab 38, Army Resp. to Debriefing Questions, Nov. 24, 2020. ICF filed this protest with our Office on November 30.²

DISCUSSION

ICF raises six primary challenges to the award to Leidos: (1) the agency unreasonably found that the awardee's proposed key personnel met the RFP's security clearance requirements; (2) the agency unreasonably evaluated the awardee's proposal under the technical evaluation factor; (3) the agency unreasonably evaluated the protester's proposal under the technical evaluation factor; (4) the agency evaluated the offerors' technical proposals in a disparate manner; (5) the agency unreasonably evaluated the realism of proposed costs; and (6) the award decision was unreasonable. We have considered all of the protester's arguments and find no basis to sustain the protest.³

The task order competition here was conducted pursuant to FAR subpart 16.5. An agency's evaluation of technical proposals is primarily the responsibility of the contracting activity, since the agency is responsible for defining its needs and identifying the best method of accommodating them. *CSRA LLC*, B-417635, *et al.*, Sept. 11, 2019, 2019 CPD ¶ 341 at 9. In reviewing protests of an agency's evaluation of proposals in a task order competition, our Office does not reevaluate proposals or substitute our judgement for that of the agency, but rather 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*, *supra*.

Key Personnel Security Clearances

ICF argues that Leidos's technical proposal did not meet the RFP's minimum requirements with regard to security clearances for key personnel. ICF asserts that the RFP required all 30 key personnel to hold active top secret/sensitive compartmentalized information (TS/SCI) security clearances "immediately, and certainly no later than upon task order award[.]" and that Leidos proposed 13 individuals for key personnel positions

² The value of the protested task order, which the Army placed against GSA's Alliant II IDIQ contract, exceeds \$10 million. Accordingly, this protest is within our jurisdiction to hear protests of task orders placed under civilian agency IDIQ contracts. 41 U.S.C. § 4106(f)(1)(B); *see Alliance Tech. Grp. LLC*, B-418558, June 16, 2020, 2020 CPD ¶ 198 at 6 n.5 (GAO's authority to consider protests of task orders issued under IDIQ contracts is based on the agency that established the IDIQ contract, rather than the agency that places the order under that contract).

³ The protester also raises other collateral arguments. Although we do not address every argument, we have reviewed them all and find no basis to sustain the protest.

who did not hold the required TS/SCI clearance by the required time. Comments at 6; Supp. Comments at 2-15. According to ICF, this should have rendered Leidos's proposal ineligible for award. *Id.* For the reasons discussed below, we find no basis to sustain the protest.

The RFP required offerors to provide "representative" resumes identifying the qualifications of the individuals who would be provided for each key position identified in tables 1A and 1B of the PWS.⁴ RFP at 10-11. The RFP advised that "[t]he key personnel requirements listed within Table 1A and Table 1B must be met or exceeded in order to be considered for award." *Id.* at 11. Tables 1A and 1B of the PWS each included a column identifying the key positions, and a corresponding column showing the security clearance requirement for those positions. AR, Tab 5, PWS at 60. Every key position identified in tables 1A and 1B required a security clearance of TS/SCI. *Id.* Regarding key personnel clearances, the PWS stated that "[a]t least 40% of the identified personnel shall have an active and up-to-date Top Secret/SCI clearance at task order award," and that clearances were required "immediately for all key personnel." *Id.* at 13.

Relevant here, the Army issued a questions and answers (Q&A) document dated April 27, 2020, which was incorporated into the solicitation. AR, Tab 13, Q&A. Regarding the key personnel security clearance requirements, a firm submitted the following comment to the agency:

Table 1 designates 18 [defense cyber operations (DCO)] Team Analysts, or 50% of the base year total analyst workforce, as key personnel. Recognizing the important role analysts play in the day-to-day operation of a [cyber security service provider (CSSP)], we understand the Government's intent to minimize risk to operations. However, designating such a large portion of the operational workforce as key, all with high-level clearances required day one, provides a clear competitive advantage to the incumbent.

Id. ¶ 67. The Army provided the following response to the comment:

The Government has re-evaluated the key personnel identified [as] essential [] in Table 1. Table 1 has been expanded into Table 1A and Table 1B to identify requirements for key personnel onboarding [] and to maximize competitive offerings. Table 1A identifies Key personnel required within 15 days of award and Table 1B identifies Key personnel required within 30 days.

Id.

⁴ As discussed below, the key personnel identified in tables 1A and 1B were originally listed in a single table 1.

The Army argues that ICF's challenge regarding the security clearances of Leidos's proposed key personnel should be dismissed because it concerns a matter of contract administration that our Office does not review as part of our bid protest function. Supp. COS/MOL at 2-8; see 4 C.F.R. § 21.5(a).

The ability to obtain a security clearance generally is a matter of responsibility, absent an express requirement in the solicitation to demonstrate the ability prior to award. *Rohmann Servs., Inc.*, B-405171, B-405171.2, Sept. 8, 2011, 2011 CPD ¶ 177 at 8. Because the determination that an offeror is capable of performing a contract is largely committed to the contracting officer's discretion, GAO will generally not consider a protest challenging such a determination. 4 C.F.R. § 21.5(c). An exception to this rule exists where a protester alleges that definitive responsibility criteria in the solicitation were not met. *Id.* Definitive responsibility criteria are specific and objective standards designed to measure a prospective contractor's ability to perform the contract. *Reyna-Capital Joint Venture*, B-408541, Nov. 1, 2013, 2013 CPD ¶ 253 at 2. Such criteria, which must be met as a precondition to award, limit the class of contractors to those meeting specified qualitative and quantitative qualifications necessary for adequate performance. *Id.* Our Office will not consider a requirement to obtain a security clearance to be a definitive responsibility criterion where the solicitation does not require the clearance to be obtained prior to award. See e.g., *Rohmann Servs., Inc.*, *supra*; *Ktech Corp.*; *Physical Research, Inc.*, B-241808, B-241808.2, Mar. 1, 1991, 91-1 CPD ¶ 237 at 3.

Here, offerors were required to submit representative resumes that specifically addressed the status of security clearances. See AR, Tab 13, Q&A at ¶ 67; AR, Tab 5, PWS at 60. We therefore conclude that the RFP contained definitive responsibility criteria for security clearances, to the extent that the proposed key personnel and representative resumes were required to address clearance status and the ability to be cleared within 15 to 30 days from task order award. As ICF alleges that definitive responsibility criteria in the solicitation were not met, we will review this challenge. 4 C.F.R. § 21.5(c).

The Army argues ICF's interpretation of the solicitation as requiring offerors to demonstrate in their proposals that all key personnel had active clearances at the time of award is not reasonable, and that Leidos's proposal met the RFP's security clearance requirement. Supp. COS/MOL at 2. The agency argues that the April 27, 2020, Q&As make clear that key personnel were required to be eligible for TS/SCI clearances upon task order award, so that those personnel could be cleared within 15 to 30 days after award. *Id.* at 5-6.

We agree with the agency that representative resumes for key personnel were not required to demonstrate active security clearances at the time of proposal submission or at the time of task order award. Instead, the solicitation required proposed key personnel or representative resumes to demonstrate affirmative TS/SCI eligibility at the time of task order award so that those employees could be cleared within 15 to 30 days

after award. AR, Tab 13, Q&A at ¶ 67. In light of the Q&A, this requirement was clear and unambiguous.

As permitted by the RFP, Leidos provided representative resumes for the 30 key personnel positions identified in the PWS; as directed by the RFP, Leidos redacted the names, signatures, and other personal identifiable information included in those representative resumes. See AR, Tab 19, Leidos Technical Proposal at 71. Leidos submitted 20 representative resumes for key personnel positions where the resume stated that the individuals held active TS/SCI clearances, and 13 representative resumes where the individuals held TS clearances and were “SCI eligible.” AR, Tab 19, Leidos Technical Proposal at 71-205. Leidos’s technical volume indicated that each proposed key person would be available to start performance at some point between task order award and not later than 30 days after award. *Id.* at 72-73.

The agency states that it understood the term SCI eligible to mean that the individual “has passed the necessary background investigation and attended a required briefing to be TS/SCI eligible,” but does not currently have an active TS/SCI clearance. Supp. COS/MOL at 4. In evaluating Leidos’s technical proposal under the manpower level of effort element, the Army determined that Leidos had provided representative resumes for each of the 30 key personnel positions listed in the PWS, and that Leidos’s proposal met the requirements. AR, Tab 29, Leidos Technical Evaluation at 4-8. On this record, we find no basis to conclude that the agency was required to reject the awardee’s proposal as unacceptable based on its proposed key personnel representative resumes and their identified security clearances. In this regard, the agency reasonably understood that Leidos’s 13 representative resumes identified individuals who were eligible to receive TS/SCI clearance and that, per the terms of the Q&As, those individuals would be available to perform no later than 30 days after award. This ground of protest is denied.

Evaluation of Leidos’s Technical Proposal

ICF argues that the Army unreasonably credited Leidos’s proposal with two strengths under the manpower level of effort element of the technical factor for: (1) two proposed journeyman-level DCO engineer key personnel (referred to by ICF as network administrators); and (2) a proposed journeyman-level software developer. Comments at 11, 17. According to the protester, the two strengths concerned proposed key personnel that Leidos did not have in its employ, and did not intend to provide. *Id.* ICF alleges that Leidos’s online employment website shows that Leidos is currently seeking candidates to fill these positions, and that the job postings request individuals with lesser qualifications than the qualifications proffered in Leidos’s proposal, for which Leidos earned strengths. *Id.* at 11-20. For the reasons discussed below, we find no basis to sustain the protest.

The Army assigned a strength to Leidos’s proposal for offering journeyman-level DCO engineers who possessed [DELETED] years of experience in excess of the RFP’s requirements, respectively, which the Army found “will assist the Government in

successful implementation of systems and software quickly and effectively to ensure mission is maintained.” AR, Tab 29, Leidos Technical Evaluation at 6. The Army found that this aspect of Leidos’s proposal will be advantageous to the government during contract performance. *Id.* The agency also assigned Leidos’s proposal a strength for its proposed journeyman-level software developer because the proposed individual exceeded the RFP’s experience requirements. The Army found that the proposed individual would “assist in creating and developing new software with lower risk of inefficiencies and data errors which will assist the Government in moving quicker from the research and development phase to implementation of new/current software.” *Id.*

ICF contends that Leidos has posted employment opportunities for positions on its online employment website that correspond to the two key personnel positions cited in the agency’s evaluation, but that these opportunities list qualifications below those identified in the awardee’s proposal for those positions. Comments at 14. The protester argues that the descriptions for these positions show that the awardee will provide individuals during performance that do not meet the qualifications identified in its proposal, and upon which the agency based its evaluation. *Id.*

Our decisions commonly refer to the kind of allegations raised by ICF as a “bait and switch.” *CACI Techs., Inc.*, B-408858, B-408858.2, Dec. 5, 2013, 2013 CPD ¶ 283 at 4. To establish an impermissible bait and switch, a protester must show: (1) that an offeror either knowingly or negligently represented that it would rely on specific personnel that it did not expect to furnish during contract performance; (2) that the misrepresentation was relied on by the agency; and (3) the agency’s reliance on the misrepresentation had a material effect on the evaluation results. *Id.* at 4-5.

We find that ICF has not established that Leidos engaged in an impermissible bait and switch. ICF has not provided sufficient evidence to establish that Leidos’s proposal misrepresented the key personnel it intended to provide for task order performance. As previously discussed, the RFP required the submission of representative resumes, which Leidos provided. RFP at 10-11; AR, Tab 19, Leidos Technical Proposal at 71. As the protester acknowledges, the qualifications in the representative resumes become part of the performance obligations, and “the Contractor will be held to the proposed key personnel requirement level for the duration of the contract to include all option years.” Comments at 13 (*quoting* RFP at 11). Thus, the agency’s evaluation relied on the credentials specified in the representative resumes, rather than any specific proposed individuals.

ICF points to nothing in the record indicating that Leidos knew or should have known that it would not be able to provide personnel that met the qualifications in the representative resumes. The RFP did not require, for instance, letters of commitment from proposed personnel, rather, it simply required representative resumes. Our Office has previously discussed this circumstance and explained that it is an offeror’s responsibility to propose personnel which that offeror reasonably expects will be available for performance. *See Advanced Commc’n. Sys., Inc.*, B-271040, B-271040.2, June 10, 1996, 96-1 CPD ¶ 274 at 3. The record here does not indicate that Leidos did

not intend to provide individuals that met the qualifications identified in the representative resumes, or that Leidos knew it would be unable to do so.

While ICF has provided our Office with job postings published on Leidos's website which seek individuals to fill journeyman network administrator and journeyman software developer positions, evidence of recruitment efforts does not establish a knowing or negligent representation by Leidos that it planned to rely on specific personnel that it did not expect to furnish during performance of the task order. See *Alamo City Eng'g. Servs., Inc.*, B-409072, B-409072.2, Jan. 16, 2014, 2014 CPD ¶ 32 at 6-7; see also *CACI Techs., Inc.*, *supra* at 8. Whether Leidos actually supplies qualified key personnel that perform under the task order is a matter of contract administration that our Office does not review under its bid protest jurisdiction. 4 C.F.R. § 21.5(a); *CACI Techs., Inc.*, *supra* at 4. This ground of protest is denied.

Evaluation of ICF's Technical Proposal

ICF argues that the Army failed to credit its proposal with additional strengths under the technical factor, and unreasonably assessed its proposal with a rating of moderate risk, which precluded the protester from receiving the highest possible rating of exceeds requirements. Protest at 26-63; Comments at 35-44. The Army argues that these challenges amount to disagreement with the agency's judgment. COS/MOL at 32-33. For the reasons discussed below, we find no basis to sustain the protest.

Strengths Assessed to ICF's Technical Proposal

The protester argues that the agency engaged in an unreasonable technical evaluation that failed to identify additional strengths in ICF's proposal. Protest at 26; Comments at 35. We address a representative example of the protester's challenges.

ICF argues that the Army's evaluation of its technical proposal under the manpower level of effort element was unreasonable because the proposal warranted additional strengths rather than just the two strengths assessed for its proposed key personnel. Protest at 27; Comments at 38. ICF explains that its proposal strategy centered on providing key personnel that exceeded the RFP's education, experience, and certification requirements. Thus, for the seven key personnel positions that included education or experience requirements, ICF argues that it "proposed personnel that greatly exceeded those requirements[.]" Protest at 31 (emphasis omitted).

The Army argues that the decision to credit ICF's proposal with two strengths under the manpower level of effort element was reasonable and in accordance with the solicitation. COS/MOL at 34. The agency explains that it recognized the experience and qualifications of ICF's key personnel exceeded the RFP's minimum requirements, but found that many of those individuals were "unnecessarily over-qualified." *Id.* The Army further explains that, on average, ICF's proposed key personnel exceeded the RFP's minimum experience requirements by 450 percent. *Id.*

For example, the Army states that the information assurance certifications possessed by each of ICF's key personnel were not required to perform this work, and that the certifications further demonstrate how ICF proposed over-qualified personnel who provided little or no added benefit to the government. *Id.* at 35. Specifically, the agency found that "most of these additional certifications are not required [] to perform these requirements and, if essential to the position, would be attained by the employee through their support of a CSSP requirement. Therefore, additional certifications beyond the required baseline certifications do not have merit in a way that would be advantageous to the Government[.]" AR, Tab 27, ICF Technical Evaluation at 3-4.

In contrast, the agency assigned ICF's proposal two strengths under this technical element for personnel with experience in excess of the solicitation's baseline requirements where those personnel were proposed to fill positions where on-the-job training was not applicable. The Army explained that those employees would be expected to bring innovative ideas to address difficult problems. *Id.* at 5.

We find that the Army's decision not to credit ICF's proposal with additional strengths was reasonable, and that the protester's disagreement with the agency's judgment does not provide a basis to sustain the protest. See *CSRA LLC, supra*. This ground of protest is denied.

Risk Rating

ICF argues that the Army unreasonably assigned its proposal a risk rating of "no worse than moderate." Protest at 61-63; Comments at 41. According to ICF, due to the risk rating assessed to its proposal, the Army "effectively relegated ICF to a 'meets' [requirements] under the terms of the [solicitation]." Protest at 63.

We note as an initial matter that the solicitation did not provide for an assignment of a risk rating that was separate from the overall technical factor ratings. Instead, the RFP defined three possible ratings for the technical factor, which included risk as a part of each rating, as follows:

- | | |
|----------------|---|
| Exceeds: | The proposal indicates an exceptional approach and strong understanding of the requirements. There are multiple identified strengths and no deficiencies. Risk of unsuccessful performance is low. |
| Meets: | The proposal meets the requirement and indicates at least an adequate approach and understanding of the requirements. Strengths may have been identified and no deficiencies. Risk of unsuccessful performance is no worse than moderate. |
| Does Not Meet: | The proposal does not meet the requirements and thus contains one (1) or more deficiencies. |

RFP at 21. The Army's technical evaluation document stated that "proposals will be evaluated to determine the extent to which each requirement has been addressed in the proposal in accordance with [] the award and evaluation information included in [the solicitation]." AR, Tab 27, ICF Technical Evaluation at 1.

The Army assigned ICF's proposal a rating of meets requirements for the following reasons:

The Offeror demonstrated at least an adequate approach and understanding of the requirements in all three (3) elements. Overall, the proposal meets the requirements and indicates an adequate approach and understanding of the requirements. Three (3) strengths were identified in Element 1, Scenario 4, and Element 3. All elements were equally weighted. No deficiencies were assessed. Risk of unsuccessful performance is no worse than moderate.

Id. at 6.

The protester argues that the Army assessed both ICF and Leidos with the same overall technical rating, but "[w]ith ICF's many years of outstanding performance as the incumbent contractor, this cannot be and is not the case." Protest at 63. As ICF and Leidos both received an overall technical rating of meets requirements, ICF argues that its assigned risk rating was prejudicial because it precluded ICF from earning the top technical rating and thus reduced its chance of being selected for award. *Id.*

We agree with the protester that the record does not clearly explain why the agency found that ICF's proposal reflected a performance risk of no worse than moderate, as opposed to low risk. We nonetheless find no basis to conclude that the protester was precluded from receiving a higher overall rating under the technical factor based on the evaluation of risk. As the agency explains, the strengths assigned to the protester's proposal did not merit the assignment of a rating of exceeds requirements because the strengths reflected an "adequate approach and understanding of the requirements[.]" but not "an exceptional approach and strong understanding[.]" COS/MOL at 40; see AR, Tab 27, ICF Technical Evaluation at 6; RFP at 21. Although the protester objects to the characterization of its performance risk as "no worse than moderate," this description was the minimum required for the adjectival rating of meets requirements. Thus, even if its proposal had been assigned a rating of low risk, there is no basis to conclude that the strengths assigned to its proposal would have merited a rating of exceeds requirements.

Additionally, we find no merit to the protester's argument that its advantages as the incumbent contractor merited a lower risk rating and higher overall technical rating. An offeror or vendor is not entitled to a specific evaluation rating based on its incumbent status, alone. *AKAL Sec., Inc.*, B-417840.4, Apr. 27, 2020, 2020 CPD ¶ 160 at 6. Instead, proposals and quotations must be evaluated based on their merit in accordance with the terms of the solicitation. *SSI, supra*. Here, we find no basis to

conclude that the agency's assignment of strengths to the protester's proposal was unreasonable, or that the overall assignment of a rating of meets requirements was inconsistent with those strengths--even in light of the agency's failure to explain the risk aspect of the evaluation. We therefore deny this ground of protest.

Disparate Treatment

ICF argues that the Army's evaluation of proposals under the manpower level of effort element treated offerors disparately, prejudicing ICF. Protest at 76-77; Comments at 44. According to ICF, "[b]y failing to evaluate whether Leidos could recruit or retain staff while at the same time discounting the benefits of ICF's key personnel on the basis that such personnel would be difficult to retain, the Army failed to treat offerors equally." Protest at 76 (*citing* Protest, exh. M, part C, Aug. 26, 2020 Government Resp. to Debriefing Questions at ¶ 38). ICF argues "to the extent the Army's evaluation and award decision was based on the perceived retention risk posed by ICF's proposed use of highly qualified personnel, its failure to evaluate whether any such recruitment or retention risk was posed by Leidos' proposed personnel amounted to disparate treatment." Comments at 44. The Army argues that its evaluation was based on the RFP's evaluation factors, and that the evaluation was fair, unbiased, and properly executed. COS/MOL at 48. For the reasons discussed below, we find no basis to sustain the protest.

In conducting procurements, agencies may not engage in conduct that amounts to unfair or disparate treatment of competing offerors. *UltiSat, Inc.*, B-416809, *et al.*, Dec. 18, 2018, 2019 CPD ¶ 6 at 9. 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. *Id.*

ICF and Leidos each earned two strengths, no weaknesses, and no deficiencies under the manpower level of effort element. AR, Tab 32, Updated SSDD at 26. Both offerors earned an overall technical rating of meets requirements. *Id.* at 6. As discussed above, we find no merit to the protester's arguments that its proposal should have been assigned additional strengths based on its proposed personnel. To the extent the protester argues that it was evaluated in an unequal manner as compared to Leidos, the record shows that the awardee's proposed representative resumes also exceeded the minimum requirements, but the awardee's proposal was not assigned additional strengths.

Under the manpower level of effort element, Leidos earned strengths for its proposed journeyman-level software developer, senior-level software developer, and journeyman-level DCO engineers. AR, Tab 29, Leidos Technical Evaluation at 6. Although all 30 of Leidos's proposed key personnel possessed information assurance certificates in excess of the solicitation's baseline requirements, the Army found this approach not beneficial to the government during contract performance. *Id.* at 4. Additionally, Leidos proposed individuals for 14 DCO team analyst positions with experience in excess of the solicitation's baseline which the Army found did not merit

strengths because the “individuals performing these task based job functions are not expected to bring innovation or a dimension of ideas to address difficult problems[.]” *Id.* at 5. Leidos’s technical evaluation results under this element are almost identical to ICF’s results. *Compare id.* at 4-6, *with* AR, Tab 27, ICF Technical Evaluation Results at 3-6.

On this record, we conclude that ICF has not shown that the Army’s assessment of strengths, and decision not to award strengths, under the manpower level of effort element was unreasonable or the product of unequal treatment. To the extent that ICF challenges the agency’s decision not to assess ICF’s proposal with certain strengths, or not to assess Leidos’s proposals with certain weaknesses, the evaluation of proposals, including the determination of the relative merits of proposals, is primarily a matter within the contracting agency’s discretion. *CSRA LLC, supra*. This ground of protest is denied.

Cost Evaluation

ICF challenges the Army’s evaluation of cost proposals. First, in evaluating ICF’s cost proposal, ICF argues that the Army unreasonably applied an escalation rate from a third-party economic forecasting firm instead of applying the escalation rate proposed by ICF. Protest at 64; Comments at 30-31. Next, ICF argues that the Army’s evaluation of Leidos’s cost proposal was unreasonable because it did not find that Leidos’s direct labor rates were unreasonably low, and thus unrealistic. Protest at 69-70; Comments at 20-21. For the reasons discussed below, we find no basis to sustain the protest.

Where an agency evaluates proposals for award of a cost-reimbursement contract, it must perform a cost realism analysis to determine the extent to which an offeror’s proposed costs are realistic for the work to be performed. FAR 15.404-1(d); *Nat’l. Gov’t. Servs., Inc.*, B-412142, Dec. 30, 2015, 2016 CPD ¶ 8 at 8. An agency’s realism analysis need not achieve scientific certainty; rather, the analysis must provide a reasonable measure of confidence that the costs proposed are realistic based on information reasonably available to the agency at the time of its evaluation. *SGT, Inc.*, B-294722.4, July 28, 2005, 2005 CPD ¶ 151 at 7. The evaluation of competing cost proposals requires the exercise of informed judgment by the contracting agency involved, since it is in the best position to assess the realism of cost and technical approaches and must bear the burden resulting from a defective cost realism analysis. *Hanford Env’tl. Health Found.*, B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 10. Because the contracting agency is in the best position to make this determination, we review an agency’s judgment in this area only to see that the agency’s cost realism evaluation was reasonably based and not arbitrary. *Id.*

Here, the RFP contemplated the award of a cost-reimbursement task order. RFP at 11. The RFP stated “[e]ach Offeror’s cost proposal shall contain sufficient quantitative and narrative documentation to adequately support and explain the costs proposed[.]” *Id.* at 12. Offerors were required to support their proposed direct and indirect labor rates with documentation of the most recent rates. *Id.* at 13-14.

The RFP explained that the total evaluated price to be used in the award determination would be the total price identified in the proposal, including all option periods, subject to a most probable cost adjustment. *Id.* at 21. The RFP advised that the agency would evaluate the realism of proposed costs in accordance with FAR subsection 15.404-1(d). Further, the RFP stated:

The Government may use external sources of information to perform its cost evaluation. Such external sources may include, but not be limited to, the Bureau of Labor Statistics [(BLS)], Department of Labor, Department of State, [Defense Contract Audit Agency (DCAA), or [Defense Contract Management Agency (DCMA)]. This DOES NOT preclude the Offeror from submitting the required supporting documentation for its proposed rates.

Id. at 22.

Evaluation of ICF's Cost Proposal

ICF argues that the Army unreasonably evaluated its cost proposal by making improper upward adjustments to its proposed escalation rates. Protest at 64. ICF proposed costs totaling \$171,923,988, and the Army found ICF's most probable cost to be \$175,642,279. AR, Tab 28, ICF Cost Report at 1. ICF proposed \$64,460,340 for direct labor. *Id.* at 3. The Army found that ICF's proposed annual escalation rates of 2 percent for direct labor were unrealistic. *Id.* at 4; see also AR, Tab 22, ICF Cost Narrative at 18-19.⁵ The Army's evaluation compared ICF's escalation rates to the IHS Global Insight⁶ employment cost index, and found different rates for each escalation period applicable to the period of performance. AR, Tab 28, ICF Cost Report at 4. This comparison is illustrated below:

Fiscal Year	ICF Proposed Escalation	Evaluated Escalation
2020	[DELETED]	3.81%
2021	[DELETED]	3.50%
2022	[DELETED]	3.33%
2023	[DELETED]	3.30%
2024	[DELETED]	3.26%
2025	[DELETED]	3.21%

⁵ Citations to ICF's cost narrative reference the Adobe PDF page numbers of the document labeled Tab 22 of the agency report.

⁶ IHS Global Insight is an economic forecasting firm. See Protest at 64; see also <https://ihsmarkit.com> (last visited Mar. 8, 2021).

Id. The Army's evaluation of ICF's cost proposal utilized the probable government direct rates multiplied by the direct labor hours to arrive at ICF's probable direct labor cost of [DELETED], an increase of [DELETED].⁷ *Id.*

ICF contends that the agency improperly adjusted the protester's escalation rates based on rates developed by IHS Global Insight. ICF argues that its proposed labor rates were based on the actual salary and fringe rate data of incumbent and contingent-hire personnel. Protest at 64. For annual escalation of costs, the protester states that it began with an assumption of [DELETED] percent escalation forecast reported by [DELETED], and then proposed a final [DELETED] percent escalation rate "after 'carefully consider[ing] the importance of determining a realistic and appropriate escalation factor and considered the country's current economic climate, budgetary constraints and recent world events.'" *Id.* at 66 (*quoting* Protest, exh. W, ICF Cost/Price Narrative, May 15, 2020, at 8).

The Army argues that ICF's proposed escalation rates were not supported. COS/MOL at 44. The Army states that although the protester's proposal states that its assumptions began with [DELETED] forecasts, the protester did not provide an adequate explanation for why it proposed the lower escalation rate of [DELETED] percent. *Id.* As the Army was not able to verify the validity of ICF's proposed escalation rate, the agency says that it reasonably used the Global Insight index to make its realism adjustment. *Id.*

Based on our review of the record, we conclude that the Army's evaluation of ICF's cost proposal was reasonable. The RFP expressly required sufficient quantitative and narrative documentation to adequately support and explain the costs proposed. RFP at 12. The Army reasonably concluded that ICF's proposal did not explain the basis for its proposed escalation rate of [DELETED] percent, aside from supported assumptions regarding its decision to propose below the [DELETED] rate of [DELETED] percent. See AR, Tab 22, ICF Cost Narrative at 18-19. Additionally, the Army reasonably used an external source--the Global Insights employment cost index--to evaluate ICF's proposed cost for realism. See AR, Tab 28, ICF Cost Evaluation at 3-4. The protester does not establish why reliance on the Global Insight data was unreasonable, and the protester's disagreement with the agency's judgment here does not provide a basis to sustain the protest. This ground of protest is denied.⁸

⁷ The Army made other upward and downward adjustments to the protester's proposed costs, resulting in an overall upward adjustment of [DELETED]. AR, Tab 28, ICF Cost Report at 3.

⁸ In any event, even if the agency had adjusted the protester's escalation rates to the [DELETED] percent [DELETED] rate, or not made any adjustments to the protester's escalation rate, the protester does not explain how it could have been competitively prejudiced, in light of the direct labor escalation adjustment of [DELETED] and the [DELETED] difference between Leidos's lower evaluated cost and ICF's higher evaluated cost and the awardee's higher technically rated proposal. See *Odyssey*

(continued...)

Evaluation of Leidos's Cost Proposal

ICF argues that the Army's evaluation of Leidos's cost proposal was unreasonable because it failed to assess what the protester contends was Leidos's unrealistically low proposed cost. Protest at 69. In this regard, ICF points to the Army's independent government cost estimate of \$198,305,296, and compares that value to Leidos's total proposed cost of \$137,137,093. *Id.* at 71. ICF asserts that "the cost of this contract is for the labor necessary to perform[.]" and that "Leidos proposed costs that are unrealistically low to either hire the incumbent workforce or to bring in new people with the skills, experience, certifications and security clearances that the solicitation required[.]" *Id.* at 73. Further, ICF claims that Leidos and its subcontractors have approached ICF employees with employment opportunities at Leidos to perform the work under the awarded task order, and that the salary offerings are well below what the employees currently earn at ICF. Comments at 21. In sum, ICF alleges that Leidos did not propose sufficient funds to recruit and retain individuals with at least the qualifications included in the representative resumes submitted with its proposal. *Id.* at 29.

The Army argues that it reasonably assessed the realism of Leidos's direct labor rates by comparing the rates to the data supplied by BLS, and states that Leidos's direct labor rates were based on its forward pricing rate recommendation (FPRR) approved by DCMA. Supp. COS/MOL at 13. The Army argues that the RFP expressly allowed the use of BLS data and FPRRs, and therefore, its evaluation of Leidos's cost proposal was reasonable and in accordance with the solicitation. *Id.*

As the Army notes, ICF does not challenge the agency's use of BLS data or FPRRs to evaluate Leidos's cost proposal for realism. While ICF argues that there is nothing in the record demonstrating that the Army considered whether Leidos proposed sufficient costs to recruit and retain qualified individuals, we conclude this statement is simply not accurate. The Army's evaluation of Leidos's cost proposal explains that Leidos provided DCMA FPRRs dated April 17, 2020 to support its proposed direct labor rates. AR, Tab 30, Leidos Cost Report at 4. In addition, the Army compared Leidos's direct labor rates to the rates provided by BLS. *Id.* The agency also found that Leidos's

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Marketing Grp., Inc., B-412695, B-412695.2, Apr. 21, 2016, 2016 CPD ¶ 109 at 5 (GAO will not sustain a protest unless the protester demonstrates competitive prejudice, that is, but for the agency's actions, the protester demonstrates that it would have had a substantial chance of receiving the award).

Similarly, the protester argues that the agency should have evaluated certain of its indirect cost rates based on an explanation in its proposal regarding a business reorganization, rather than the historical rates provided. Comments at 34. Here again, the protester does not explain how the information it provided satisfied the RFP criteria regarding support for proposed costs, or how the agency's adjustments could have resulted in competitive prejudice.

proposed annual direct labor rate escalation rate of [DELETED] percent for all labor categories was supported by its FPRR up to March 31, 2025. *Id.* at 5. As the use of FPRRs was authorized under the RFP, the Army reasonably applied the [DELETED] percent escalation rate to all periods for the probable direct labor. *Id.*; see RFP at 13 (authorizing FPRRs to support proposed direct labor rates); RFP at 14 (“rates reflected in the [] FPRR, or other statement of current rates should directly match the rates proposed by the Offeror”). The Army’s cost evaluation concluded that, in accordance with its cost realism analysis, Leidos’s total probable cost was \$137,171,726, which was [DELETED] higher than Leidos’s total proposed cost. AR, Tab 30, Leidos Cost Report at 9. We find that the Army’s evaluation of Leidos’s cost proposal for realism was reasonable and in accordance with the RFP. As such, this ground of protest is denied.

Best-Value Tradeoff

ICF alleges that the best-value tradeoff was flawed because it failed to “look behind” the technical ratings assigned to the ICF and Leidos proposals, and resulted in an award on a lowest-cost, technically acceptable basis, rather than the best-value tradeoff required by the RFP.⁹ Protest at 77-85; Comments at 49-56. The Army argues that its best-value tradeoff was performed in accordance with the solicitation and resulted in a reasonable source selection decision. COS/MOL at 48. For the reasons discussed below, we find no basis to sustain the protest.

Source selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will make use of technical and cost evaluation results. *Cyber Protection Techs., LLC*, B-416297.2, B-416297.3, July 30, 2018, 2018 CPD ¶ 270 at 9. Tradeoffs between technical and price factors may be made, so long as any tradeoff decisions are rational and consistent with the solicitation’s evaluation criteria. *Sci. Applications Int’l. Corp.*, B-411212.2, B-411212.3, June 19, 2015, 2016 CPD ¶ 67 at 4. Where a tradeoff between technical and price factors is made, the source selection decision must be documented, and the documentation must include the agency’s rationale for its decisions. *Cyber Protection Techs., LLC*, *supra*.

After reevaluating proposals in response to the first round of protests challenging this procurement, the agency assigned ICF’s proposal three strengths, no weaknesses, and no deficiencies, and Leidos’s proposal four strengths, two weaknesses, and no deficiencies. AR, Tab 32, Updated SSDD at 26. Based on these strengths and weaknesses, the agency assigned both proposals an overall technical rating of meets requirements. *Id.*

⁹ The protester also argues that the award was flawed because it was based on unreasonable technical and cost evaluations. As discussed above, we find no merit to the protester’s challenges to the underlying evaluations.

The agency's source selection decision discussed its basis for assigning strengths and weaknesses to the offerors' proposals. *Id.* at 10-15. The decision compared the evaluations for each proposal, noting that "each of the Offerors provided an adequate technical approach and understanding of the requirements." *Id.* at 27. For each element of the technical evaluation factor, the agency discussed and compared the three strengths assigned to ICF's proposal, and the four strengths and two weaknesses assigned to Leidos's proposal. *Id.* at 26-28.

Based on the technical evaluations, the Army concluded that Leidos's technical proposal offered a "more beneficial approach and understanding of the requirements." *Id.* at 28. Specifically, the agency explained that "the required work is to provide innovative [research and development (R&D)] in near-term DCO services while also successfully transitioning R&D solutions into cyber operational practice within the cyber warfighting domain." *Id.* The agency further explained that "the efficiencies in research efforts and shorten[ed] development cycles with more productive solutions is a more beneficial approach for the long term success of DCO for the Government." *Id.* at 28-29.

The agency also found that Leidos's proposal represented a significant cost savings as compared to ICF's proposal. *Id.* at 29. The SSA stated "I do not find the additional premium of \$38,470,55[3] for the benefits highlighted in the discussion of ICF Incorporated, LLC's three (3) strengths justified when compared to the overall lower cost and technical benefits found within Leidos Inc.'s proposal." *Id.*

In conclusion, the record demonstrates that the agency's tradeoff and source selection decision did not simply consider the technical ratings and numbers of strengths and weaknesses, but thoroughly considered and compared the underlying support for the technical ratings and the strengths and weaknesses assessed.¹⁰ The SSDD cites specific examples of unique attributes in each of the offerors' proposals, and provides an adequate discussion as to why the unique attributes of Leidos's solution led the agency to determine that Leidos's proposal represented the best value to the government. *See id.* at 28-29. The record further shows that the agency did not make award on a lowest-cost, technically acceptable basis, as the agency found that Leidos's technical proposal provided "a more beneficial approach" as compared to ICF's proposal. *Id.* at 28.

¹⁰ Additionally, ICF argues that the weaknesses in Leidos's proposal were unreasonably minimized or ignored in the tradeoff decision. The record demonstrates, however, that they were appropriately considered and weighed by the agency. In this regard, the agency acknowledged the weaknesses, but found that they would "add minimal risk to the overall technical approach provided by Leidos, Inc." *Id.* at 29.

As a result, we find that the agency's award decision was reasonable, consistent with the solicitation's evaluation criteria, and adequately documented.

The protest is denied.

Thomas H. Armstrong
General Counsel