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Decision

Matter of: NTT Data Services Federal Government, LLC

File: B-419197.2

Date: July 6, 2021

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DIGEST

1. Protest challenging the evaluation of the protester's price is denied where the agency reasonably found that the protester's price was not fair and reasonable, and therefore the protester was not eligible for award.
 2. Protest challenging the evaluation of the awardee's price is denied where the solicitation did not require a price realism evaluation.
 3. Protest that the agency should have rejected the awardee's proposal as technically unacceptable is denied where agency's evaluation was reasonable and consistent with the terms of the solicitation.
 4. Protester is not an interested party to challenge the evaluation of its technical proposal where the agency reasonably found that the proposal was ineligible for award because its price was not fair and reasonable.
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DECISION

NTT Data Services Federal Government, LLC, of Herndon, Virginia, protests the issuance of a task order to Perspecta Enterprise Services LLC, also of Herndon, Virginia, under request for task order proposals (RFTOP) No. 75D301-20-R-67883, which was issued by the Department of Health and Human Services, Centers for Disease Control and Prevention (CDC), for cloud computing services. NTT argues that

the agency unreasonably evaluated the protester's and awardee's prices and technical proposals.

We deny the protest.

BACKGROUND

The CDC issued the RFTOP on July 1, 2020, seeking proposals to provide hybrid private and public cloud computing services for the CDC's Office of the Chief Information Officer. Agency Report (AR), Tab 31, RFTOP amend. 3 at 1, 15.¹ The solicitation was issued pursuant to the procedures of Federal Acquisition Regulation (FAR) subpart 16.5, to firms that hold Chief Information Officer--Solutions and Partners 3 (CIO-SP3) indefinite-delivery, indefinite-quantity (IDIQ) contracts, which were awarded by the National Institutes of Health. *Id.* at 15. The solicitation anticipated the issuance of a task order with fixed-price and time-and-materials contract line item numbers (CLINs), with a base period of 3 years, with two 1-year options. *Id.* at 4-9.

The performance work statement (PWS) stated that "[t]he broad objective of the CDC cloud initiative is to advance CDC [information technology (IT)] capabilities through modernization and innovation to further enable the CDC's core mission of protecting the science of public health." *Id.* at 15. The "specific objectives" of the task order are to "[p]rovide a hybrid private and public cloud environment that enables CDC to leverage the latest infrastructure and platform technologies," "[p]rovide, operate, and manage a private cloud service in a CDC Licensed Space," "[b]roker and manage public cloud services from multiple CDC-contracted Cloud Service Providers (CSPs)," and "[a]s requested, assist CDC modernization efforts by planning and executing legacy application migrations to private or public cloud services." *Id.* The PWS identified 10 tasks that the successful offeror² will be required to perform: (1) general management, (2) hardware and software services, (3) tools software administration, (4) middleware administration, (5) cloud brokerage, (6) cloud migration support, (7) cloud services, (8) database services, (9) transition services, and (10) disaster recovery. *Id.* at 17.

¹ Citations to the solicitation are to RFTOP amendment 3. Citations to documents in the agency report are to the page numbers added by the agency, e.g., page X of Y.

² Although firms that compete for task orders under IDIQ contracts are generally referred to as "vendors," the record and the parties' briefings use this term as well as "offerors" interchangeably. Our decision uses the term offerors for the sake of consistency.

The solicitation stated that proposals would be evaluated on the basis of the following three factors: (1) technical, (2) past performance³, and (3) cost/price. *Id.* at 87. The technical factor had four subfactors: (1) transition-in, (2) managed service delivery, (3) cybersecurity and IT, and (4) program management and quality. *Id.* at 88. The four subfactors were weighted in descending order of importance as follows: second, fourth, third, and first. *Id.* at 90. The past performance factor advised that “[t]he Government reserves the right to evaluate the past performance of the Offeror.” *Id.* at 91. For purposes of award, the evaluation factors other than cost/price were “more important” than cost/price.⁴ *Id.* at 87.

The CDC received proposals from two offerors, NTT and Perspecta, by the closing date of August 12. AR, Tab 7, Award Decision Memorandum (ADM)⁵ at 1. The agency selected Perspecta’s proposal for award on September 15. *Id.* NTT filed a protest with our Office challenging the award on September 25, arguing that the agency failed to reasonably evaluate the offerors’ price and cost proposals. On October 19, the agency advised that it would take corrective action in response to the protest by reevaluating the proposals. *NTT DATA Servs. Fed. Gov’t, Inc.*, B-419197, Nov. 2, 2020, at 1 (unpublished decision). Based on the agency’s notice of corrective action, we concluded that the protest was rendered academic and therefore dismissed it. *Id.*

The agency’s corrective action consisted of a reevaluation of the proposals. The revised evaluation findings were as follows:⁶

	NTT	PERSPECTA
Technical	Acceptable	Outstanding
Transition-in	Acceptable	Outstanding
Managed Service Delivery	Acceptable	Outstanding
Cybersecurity and IT	Acceptable	Good

³ The solicitation referred to this factor as both past performance and similar experience. RFTOP at 87-88, 91.

⁴ The RFTOP also separately advised that the non-cost evaluation factors, when combined, were “significantly more important” than cost/price, but that cost/price would “contribute substantially” to the award decision. RFTOP at 88.

⁵ The ADM referenced here is for the current award challenged by NTT; this document also described the initial award.

⁶ The agency assigned proposals one of the following ratings under the technical evaluation factor and its subfactors: outstanding, good, acceptable, marginal, or unacceptable. AR, Tab 15, NTT Consensus Ratings at 1; Tab 16, Perspecta Consensus Ratings at 1. The agency did not assign a separate evaluation rating for the past performance factor. See *id.*; Tab 7, ADM at 1-4.

Program Management and Quality	Good	Outstanding
Cost/Price	\$186,507,294	\$60,298,955

AR, Tab 15, NTT Consensus Ratings at 1; Tab 16, Perspecta Consensus Ratings at 1; Tab 7, ADM at 2.

The contracting officer, who was also the source selection authority, concluded that Perspecta’s proposal merited award based on its superior technical approach and lower price as compared to NTT’s proposal. AR, Tab 7, ADM at 3-4. The contracting officer noted that Perspecta’s proposal received the highest possible technical rating of outstanding, based on the assignment of 96 strengths, 11 of which were significant strengths, and 18 weaknesses, 1 of which was a significant weakness. *Id.* at 3. In contrast, the contracting officer noted that NTT’s proposal received a lower rating of acceptable, based on the assignment of 66 strengths, 1 of which was a significant strength, and 72 weaknesses, 8 of which were significant weaknesses. *Id.* The contracting officer also found that while Perspecta’s price was fair and reasonable, “NTT Data’s proposed price exceeds both Perspecta’s proposed price and the Government’s [independent government cost estimate (IGCE)] by three times.” *Id.* at 2-3. For this reason, the contracting officer found that “NTT Data’s proposed price is not fair and reasonable to the Government, and therefore is unsuitable for award. . . .” *Id.* at 3.

The CDC notified Perspecta and NTT of the award decision on March 24. AR, Tab 6, Award Notice at 1. The agency provided a written debriefing to NTT on March 26, and this protest followed.

DISCUSSION

NTT raises four primary challenges to the CDC’s award of the task order to Perspecta: (1) the agency unreasonably found that NTT’s price was not fair and reasonable; (2) the agency should have found that Perspecta’s price was too low; (3) the agency should have found that Perspecta’s proposal was unacceptable under the technical evaluation factor; and (4) the agency should have assigned NTT’s proposal a higher adjectival rating under the technical evaluation factor.⁷ Comments at 1. For the reasons discussed below, we find no basis to sustain the protest in connection with the first three arguments. Because we conclude that the agency reasonably found that the protester’s price was not fair and reasonable, and that the protester was therefore ineligible for award, and because the agency also reasonably found that the awardee’s proposal was technically acceptable, we conclude that the protester is not an interested party to pursue its fourth argument concerning the evaluation of its technical proposal.

⁷ NTT 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.

This task order competition was conducted among CIO-SP3 IDIQ contract holders pursuant to the provisions of FAR subpart 16.5. In reviewing protests of awards in task order competitions, we do not reevaluate proposals or quotations but examine the record to determine whether the evaluations and source selection decision are reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations. *DynCorp Int'l LLC*, B-411465, B-411465.2, Aug. 4, 2015, 2015 CPD ¶ 228 at 7. It is a fundamental principle of federal procurement law that a contracting agency must treat all offerors or vendors equally and evaluate their proposals or quotations evenhandedly against the solicitation's requirements and evaluation criteria. *Sumaria Sys., Inc.; COLSA Corp.*, B-412961, B-412961.2, July 21, 2016, 2016 CPD ¶ 188 at 10. A protester's disagreement with the agency's judgment regarding the evaluation of proposals or quotations, without more, does not establish that the agency acted unreasonably. *Imagine One Tech. & Mgmt., Ltd.*, B-412860.4, B-412860.5, Dec. 9, 2016, 2016 CPD ¶ 360 at 4-5.

Evaluation of NTT's Price

NTT argues that the CDC unreasonably found that its price was not fair and reasonable, and that its proposal was therefore ineligible for award. Comments at 50-54. The protester primarily argues that the agency failed to consider its technical approach in the evaluation of its price, and that the agency should have found its price fair and reasonable for its proposed technical approach. For the reasons discussed below, we find no basis to sustain the protest.

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. Although task order procurements conducted under FAR subpart 16.5 are not subject to the same requirements as those conducted under FAR part 15, FAR section 16.505(b)(3) directs agencies to establish prices for task orders consistent with the policies and methods contained in FAR subpart 15.4. FAR 16.505(b)(3); *Accenture Fed. Servs. LLC et al.*, B-417111.5 *et al.*, Sept. 4, 2019, 2019 CPD ¶ 339 at 10 n.9.

The purpose of a price reasonableness analysis is to ensure that the government does not pay too high a price for a contract or task order. FAR 15.404-1(b); *Crawford RealStreet Joint Venture, supra*. The FAR includes a non-exhaustive list of permitted price analysis techniques that ensure that the agency pays a fair and reasonable price, including, as relevant here: (1) comparison of prices received, (2) comparison of prices received to historical prices, and (3) comparison of prices received to an independent government cost estimate (IGCE). FAR 15.404-1(b)(2). The FAR states that "[t]he first two techniques at 15.404-1(b)(2) [comparison of prices received, and comparison to historical prices] are the preferred techniques," but also states that "if the contracting officer determines that information on competitive proposed prices or previous contract prices is not available or is insufficient to determine that the price is fair and reasonable, the contracting officer may use any of the remaining techniques as appropriate to the circumstances applicable to the acquisition." *Id.* at (b)(3). The manner and depth of an

agency's price analysis is a matter committed to the discretion of the agency, which we will not disturb provided that it is reasonable and consistent with the solicitation's evaluation criteria and applicable procurement statutes and regulations. *TransAtlantic Lines, LLC*, B-411846.3, B-411846.4, May 18, 2016, 2016 CPD ¶ 148 at 7; *Federal Acquisition Servs. Alliant JV, LLC*, B-415406.2, B-415406.3, Apr. 11, 2018, 2018 CPD ¶ 139 at 11.

Here, the solicitation stated that the agency would evaluate whether proposed prices were reasonable: "Each Offeror's price proposal will be evaluated to determine whether it is complete, reasonable, and consistent with the Offeror's technical approach." RFTOP at 91. An agency contracting specialist prepared a memorandum documenting the agency's evaluation of the reasonableness of NTT's and Perspecta's prices; this memorandum was signed by the contracting officer. AR, Tab 8, Price Reasonableness Evaluation at 1-3.

The CDC's evaluation first noted that "competition normally establishes price reasonableness," and that adequate price competition exists where: two or more responsible offerors competing independently submit priced offers that satisfy the Government's expressed requirement; price is a substantial evaluation factor and award will be made based on the proposal that represents the best value; and there is no finding that the price of the successful offeror is unreasonable. *Id.* at 1 (*citing* FAR 15.305(a)(1), 15.403-1(c)(1)). The agency stated, however, that the existence of adequate price competition "is not the only means of determining whether the prices offered by the vendors are fair and reasonable," and concluded that other evaluation methods in FAR 15.404-1 were required. *Id.* at 2. In this regard, the agency noted that "[s]ince only two proposals were received a direct comparison of the proposals against each other does little to establish price reasonableness since the pricing aligns to differing approaches and solutions described in the technical proposals." *Id.* The agency found, however, that a comparison of the prices showed that Perspecta's price was 67 percent lower than NTT's, which "indicates that one--or perhaps both--proposals are not offering fair and reasonable pricing to the [g]overnment." *Id.*

The CDC next compared the IGCE to NTT's and Perspecta's prices. *Id.* The agency explained that the IGCE was developed based on the analysis of a contractor that considered industry data, market research, and historical prices. *Id.* The agency found that NTT's price of \$186.5 million was 194 percent greater than the IGCE of \$63.5 million. *Id.* In contrast, the agency found that Perspecta's price of \$60.3 million was 5 percent lower than the IGCE. *Id.* With the addition of the IGCE comparison, the agency further found that "since Perspecta's proposal is fair and reasonable when compared to the IGCE, one may conclude that NTT Data's proposed price is not fair and reasonable since it is so wildly off from both the IGCE and Perspecta's proposed price." *Id.*

In addition, the contracting officer's representative (COR) reviewed NTT's and Perspecta's prices "in light of their understanding of the unique technical solutions of the two proposing vendors." *Id.* With regard to NTT, the COR found that the protester's

price was not reasonable in part because it “rel[ie]d heavily on costly software beyond CDC’s existing environment which contributed to the increased costs for services.” *Id.* The COR also found that the protester’s “lack of overall understanding of the target environment may have led to additional costs for the Public Cloud Server Management costs.” *Id.* Based on these analyses, the contracting officer agreed that Perspecta’s price was fair and reasonable, and that NTT’s price was not fair and reasonable. *Id.* at 3.

In the award decision, the contracting officer noted that “[w]hen compared with the IGCE, NTT’s proposal is significantly greater than the IGCE -- 194%, or \$122,965,110.47, greater than the IGCE,” while “Perspecta’s proposal is lower than the IGCE by \$3,243,928.44, or 5%.” AR, Tab 7, ADM at 2. The contracting officer stated that “[w]hile NTT Data was determined to be capable of performing the requirements of the RFTOP, NTT Data’s proposal was not determined to offer fair and reasonable pricing to the Government.” *Id.* The contracting officer also explained that the protester’s price “greatly exceeds CDC’s available funding.” *Id.* at 3.

NTT primarily argues that the CDC’s price reasonableness evaluation did not “meaningfully consider” its technical approach. Comments at 51. Instead, the protester contends that the agency placed improper emphasis on the differences between its price and the IGCE and Perspecta’s price. In essence, the protester contends that an offeror’s price--no matter how high--must be found fair and reasonable as long as the price is appropriate for the proposed technical approach. In support of its argument, the protester cites two of our decisions for the proposition that agencies should consider price relative to the particular approach taken by the offeror: *Integrated Concepts & Research Corp.*, B-309803, Oct. 15, 2007, 2008 CPD ¶ 117 and *TMG Services, Inc.*, B-410929, B-410929.2, Mar. 25, 2015, 2015 CPD ¶ 121.

First, our decision in *Integrated Concepts & Research Corp.*, is inapposite here, as that decision concerned a cost realism evaluation. *Integrated Concepts & Research Corp.*, *supra* at 5. Unlike the sections of the FAR concerning price analyses, the sections of the FAR concerning cost realism analyses specifically direct agencies to “determine whether the estimated proposed cost elements are realistic for the work to be performed” in a cost-reimbursement contract. See FAR 15.404-1(b), (d).

Second, our decision in *TMG Services, Inc.* concerned a protester’s argument that the awardee’s price should have been found not fair and reasonable because it was 13.7 percent higher than the independent government estimate and 21.8 percent higher than the protester’s price. *TMG Services, Inc.*, *supra* at 6. Our Office denied the protest, explaining that the fact that the awardee’s price was higher than the government estimate and the protester’s price, alone, did not establish that it was unreasonably high. *Id.* at 5-6. Instead, we stated that a price reasonableness “evaluation should consider price relative to the particular approach taken by the offeror,” and that the agency reasonably found that the awardee’s price was reasonable, given its technical approach. *Id.* at 7.

Our decision in *TMG Services, Inc.* did not state that an agency is prohibited from finding that a proposed price--particularly one that exceeds the government's funding limitation--is inherently too high to be fair and reasonable. Rather, the decision stands for the proposition that there is no fixed percentage difference that will render unreasonable an agency's finding that an offeror's or vendor's proposed price is reasonable, provided the agency concludes that the price is reasonable for the proposed technical approach. *Id.* at 6.

The record shows that the CDC considered NTT's technical approach and acknowledged that differences between that approach and the awardee's approach precluded a reasonableness determination that relied solely on a comparison between the offerors' prices. AR, Tab 8, Price Reasonableness Evaluation at 2. The agency found that, because the proposed approaches were different, a comparison of the prices to the IGCE was appropriate, and that this comparison showed that the awardee's price was 194 percent, or nearly three times, higher than the IGCE. *Id.*

NTT contends, in essence, that the agency was prohibited from finding that its price was not fair and reasonable based on a comparison to the IGCE without first determining whether the protester's price was appropriate for its proposed technical approach. We note that nothing in the FAR requires an agency to consider technical approach in assessing whether a price is fair and reasonable. See FAR 15.404-1(b). Instead, the FAR expressly permits agencies to determine price reasonableness based on a comparison of an offeror or vendor's price to an IGCE.⁸ *Id.* at 15.404-1(b)(2)(v). On this record, we find no basis to conclude that the agency unreasonably concluded that the protester's price was not fair and reasonable in light of the fact that it was 194 percent higher than the IGCE.⁹

Finally, NTT argues that the agency's evaluation was unreasonable because the COR's evaluation, which was prepared in support of the price reasonableness memorandum, incorrectly states that the protester's price was 293.5 percent higher than the IGCE. Comments at 53. The agency acknowledges that the COR's evaluation, which was dated December 27, 2020, incorrectly states that NTT's "overall proposed cost is 293.5% higher than the IGCE." Supp. Memorandum of Law (MOL) at 5; AR, Tab 10, COR Evaluation of NTT Price at 2. The agency states, however, that this was a typographical error, and notes that the price reasonableness evaluation, which was dated February 1, 2021, and the award decision, which was dated March 2, both state the correct figure of 194 percent. Supp. MOL at 5; AR, Tab 10, COR Evaluation of NTT

⁸ The protester does not challenge the reasonableness of the IGCE. See Supp. Comments at 2 n.1.

⁹ In any event, as noted above, the record shows the agency assessed NTT's understanding of the solicitation requirements as part of its conclusion that the protester's price was not fair and reasonable. See AR, Tab 8, Price Reasonableness Evaluation at 3.

Price at 2; Tab 8, Price Reasonableness Evaluation at 1-3; Tab 7, ADM at 2. We think the record supports the agency's representation that the COR's calculation was a typographical error which had no effect on the agency's evaluation or the source selection decision. We therefore find no basis to sustain the protest.

Evaluation of Perspecta's Price

Next, NTT argues that the CDC failed to reasonably evaluate Perspecta's price, which the protester contends was too low to perform the RFTOP's requirements. Comments at 54-58. The protester argues that the solicitation required the agency to evaluate whether the awardee's price was so low that it posed performance risk or otherwise rendered it unacceptable for award. For the reasons discussed below, we find no basis to sustain the protest.

As a general matter, when awarding a fixed-price contract or task order, an agency is only required to determine whether the offered prices are fair and reasonable. See FAR 16.505(b)(3), 15.402(a); *HP Enter. Servs., LLC*, B-413888.2 *et al.*, June 21, 2017, 2017 CPD ¶ 239 at 5. An agency may, however, conduct a price realism analysis in awarding a fixed-price contract or task order for the limited purposes of assessing whether an offeror's or vendor's low price reflects a lack of technical understanding or performance risk. See FAR 15.404-1(d)(3); *Emergint Techs., Inc.*, B-407006, Oct. 18, 2012, 2012 CPD ¶ 295 at 5-6. Where a proposal or quotation does not expressly provide for the evaluation of price realism, we will conclude that a solicitation requires such an evaluation only where the solicitation: (1) states that the agency will review prices to determine whether they are so low that they reflect a lack of technical understanding, and (2) states that a proposal or quotation can be rejected or assessed technical risk for offering low prices. *NJVC, LLC*, B-410035, B-410035.2, Oct. 15, 2014, 2014 CPD ¶ 307 at 8; *DynCorp Int'l LLC*, B-407762.3, June 7, 2013, 2013 CPD ¶ 160 at 9. Absent a solicitation provision providing for a price realism evaluation, agencies are neither required, nor permitted, to conduct a realism evaluation in awarding a fixed-price contract or task order. See *Emergint Techs., Inc., supra*.

The RFTOP stated that price would be evaluated as follows:

2.4 Cost/Price Factor Evaluation

a) Price Evaluation: Each Offeror's price proposal will be evaluated to determine whether it is complete, reasonable, and consistent with the Offeror's technical approach; whether it reflects a clear understanding of the solicitation requirements; and whether it contains balanced pricing. Only proposals that are rated technically acceptable will be reviewed. . . .

b) Price Realism: A price realism analysis of the proposal may be conducted for such purposes as determining an offeror's understanding of the solicitation's requirements or assessing risk associated with an offeror's proposal.

RFTOP at 91.

As an initial matter, there is no dispute that the second paragraph of the above quoted solicitation guidance on price realism stated that the agency “may” elect to perform price realism. As our Office has explained, a solicitation that provides that an agency “may” conduct a price realism evaluation does not commit the agency to do so; rather, it reserves the decision to the agency’s discretion. See *MES Simulation & Training Corp.*, B-416210, B-416210.2, July 10, 2018, 2018 CPD ¶ 261 at 7.

Nonetheless, NTT argues that despite the conditional language in the second paragraph expressly addressing price realism, the first paragraph of the quoted solicitation guidance mandates a price realism review. NTT contends that the terms of paragraph a above, concerning “a clear understanding of the solicitation requirements,” required the agency to assess whether Perspecta’s price was so low that it demonstrated a lack of understanding of the technical requirements. Comments at 55-56 (*quoting* RFTOP at 91). The agency argues that this RFTOP provision did not require an evaluation of whether an offeror’s proposed price was too low. MOL at 31-32.

Where a dispute exists as to a solicitation’s requirements, we begin by examining the plain language of the solicitation. *Bluehorse Corp.*, B-414809, Aug. 18, 2017, 2017 CPD ¶ 262 at 5. When a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. *Constructure-Trison JV, LLC*, B-416741.2, Nov. 21, 2018, 2018 CPD ¶ 397 at 3.

We conclude that the solicitation provision cited by NTT in paragraph a, price evaluation, cannot be reasonably understood to refer to price realism, because that term is separately addressed in paragraph b, price realism. Reading the solicitation as a whole, it would not be reasonable to conclude that a reference in paragraph a to an evaluation of an offeror’s “clear understanding of the solicitation requirements” was intended to obligate the agency to conduct a price realism evaluation, without regard to the price realism provision in paragraph b.

In any event, even if the price evaluation and price realism provisions could be read separately, without regard to each other, the provision concerning “a clear understanding of the solicitation requirements” does not constitute a requirement to conduct a price realism evaluation. In this regard, the provision does not specifically state that proposals will be evaluated to assess an offeror’s understanding of the technical requirements in the context of whether a price is too low. Additionally, the provision does not state that a proposal may be rejected or assessed risk if the agency finds that a low price reflects a lack of understanding of the requirements. Although the protester argues that the agency did not specifically evaluate whether the awardee’s

price reflected a clear understanding of the solicitation requirements, we note that the protester's arguments solely concern whether the agency should have made a negative assessment of the awardee's proposal on the basis of its allegedly low price. On this record, we conclude that the provision cited by the protester in paragraph a of the cost/price factor did not require the agency to assess whether the awardee's price was too low and therefore reflected a lack of understanding of the requirements. See *NJVC, LLC, supra*; *DynCorp Int'l LLC, supra*.

With regard to the price realism provision in paragraph b, the RFTOP states that such an evaluation "may be conducted for such purposes as determining an offeror's understanding of the solicitation's requirements or assessing risk associated with an offeror's proposal." RFTOP at 91. The contracting officer drafted a memorandum documenting the conclusion that a price realism evaluation was not required because the awardee's proposal was only 5 percent lower than the IGCE. AR, Tab 17, Price Realism Determination at 2. The protester's disagreement with the agency's decision not to conduct a price realism evaluation, without more, does not demonstrate that the agency abused its discretion under the terms of the solicitation. See *MES Simulation & Training Corp., supra*. In sum, the protester does not demonstrate that the cost/price evaluation factor required the agency to conduct a price realism analysis, or otherwise assess whether an offeror's proposed price was too low.

Evaluation of Perspecta's Technical Proposal

Next, NTT argues that the CDC should have found that Perspecta's proposal was unacceptable under the technical factor in connection with PWS tasks Nos. 2 and 6. For the reasons discussed below, we find no basis to sustain the protest.

The RFTOP stated that technical proposals "must be sufficient in detail and scope to permit evaluation and provide the technical evaluators a clear understanding of the Offeror's capability to meet or exceed the defined elements as required by the PWS." RFTOP at 80. Each of the subfactors of the technical evaluation factor advised that the agency would evaluate proposals to determine offerors' knowledge and understanding of the PWS requirements. *Id.* at 90-91.

NTT first argues that Perspecta's proposal should have been found unacceptable because it did not comply with the requirements for PWS task No. 2, which concerns hardware and software services. The PWS states that the firm awarded the task order to perform as the Managed Service Provider (MSP) "shall provide, operate, and manage a private cloud service in the Licensed Space" and "shall provide the required infrastructure and operate and manage the entire cloud service including compute, storage and backup, internal data center network, and cloud management (e.g., Cloud Management Platform)." RFTOP at 15. PWS task No. 2 requires the MSP to "[p]rocure and insure modern hardware to accommodate the projected operational private cloud requirements," and also provides that "[a]ll hardware procured will be the property of the MSP." *Id.* at 19.

NTT argues that Perspecta's proposal does not comply with these PWS requirements because it "proposes to outsource the fulfillment of many of these requirements to Hewlett Packard Enterprise ('HPE'), a provider of commercial private cloud 'as-a-service' solutions." Comments at 2-3. In this regard, the protester contends that Perspecta's proposed use of HPE is improper because HPE, rather than Perspecta, will operate, manage, and own the hardware required for performance of the private cloud requirements. *Id.* at 3. The protester argues that the failure to meet the material requirement should have merited the assignment of a deficiency that rendered the awardee's proposal unacceptable.

The CDC argues that NTT's interpretation of the RFTOP is unreasonable because it is based on the incorrect premise that offerors were prohibited from relying on subcontractors or third-party vendors for the purchase, installation, or operation of hardware and services for the private cloud. Supp. MOL at 7. In this regard, the agency notes that the PWS distinguishes between the roles of the MSP and the government, and provides that the MSP will provide and manage the cloud services on behalf of the CDC. See RFTOP at 15. The agency contends, therefore, that the statement in the PWS that "[a]ll hardware procured will be the property of the MSP," is properly understood to mean that the hardware will not be owned by the government, rather than meaning that the prime contractor cannot rely on subcontractors or third-party vendors to fulfill the hardware requirements. *Id.* (citing RFTOP at 17). The agency further asserts that the solicitation does not distinguish between the prime contractor and its subcontractor or third-party vendors in the manner argued by NTT.

With regard to the hardware requirements, the PWS defined MSP equipment in a manner that specifically anticipated that the MSP could rely on other parties to meet the solicitation requirements:

"MSP Equipment" means any IT equipment such as racks, power strips, cabinets, servers, storage, network devices, and other devices that will be installed in the Licensed Space by the MSP or any third party that might be contracted by the MSP to install and operate those devices.

RFTOP at 16. The agency contends that this provision specifically anticipates that offerors may rely on subcontractors and vendors to meet the PWS hardware requirements.

On this record, we agree with the agency that the solicitation did not prohibit offerors from relying on subcontractors or third-party vendors to meet the PWS requirements. We find that the protester's interpretation of the RFTOP as prohibiting an offeror from proposing to meet the PWS task No. 2 requirements through the services of a

subcontractor or third-party vendor is not reasonable. For this reason, we find no basis to sustain the protest.¹⁰

Next, NTT argues that Perspecta's proposal did not propose sufficient labor to perform the requirements of PWS task No. 6, which concerns cloud migration support. PWS task No. 6 was to be priced under optional time-and-materials (T&M) CLINs 0008, 1008, and 2008 (the X0008 CLINS). RFTOP at 5, 7, 9. The agency explains that the CLIN was to be issued on a T&M basis "due to the uncertainty surrounding the applications that would be selected to be moved, how many applications would need migration support, and the complexity of the applications selected." Supp. Contracting Officer's Statement (COS) at 5.

NTT notes that the agency's price reasonableness memorandum identified a concern regarding the number of hours proposed by Perspecta for this task. The price reasonableness evaluation stated that the "COR indicated that Perspecta may have proposed less hours than necessary in the direct labor portion of the proposal; however, the overall proposed pricing aligned with the COR's expectations of Perspecta's proposed technical solution and the RFTOP requirements." AR, Tab 8, Price Reasonableness Evaluation at 3. The COR's analysis of the awardee's price, which was prepared for the price reasonableness evaluation, included the following finding:

Are the number and mix of proposed labor hours proposed too high, low or relative to the technical requirements of the task?

Answer: The offer's estimation of the number of labor hours for each category is estimated as low, relative to the technical requirements of CLIN 0008/1008/2008. Each proposed labor category should be at least 1 [full-time equivalent employee (FTE)] (2080 hours) and not a partial body as stated in the submission.

AR, Tab 9, COR Evaluation of Perspecta Price at 1.

The protester contends that adjusting each of the labor categories for the three X0008 CLINs to an FTE implies that the agency found that the awardee had proposed only 26

¹⁰ As the agency notes, NTT's proposal stated that it would utilize a number of subcontractors that provide storage as a service solutions as part of its own approach to the solicitation's private cloud requirements. Supp. MOL at 12 (*citing* AR, Tab 37, NTT Proposal at 75). The protester contends that its proposed use of subcontractors was not improper because it was relying on subcontractors for part of the private cloud requirements, as compared to what the protester contends was Perspecta's approach of relying on a third party vendor for the entirety of the requirements. See Supp. Comments at 4-5. Although we find the agency's interpretation of the solicitation was reasonable with regard to the use of subcontractors and third-party vendors, we also agree with the agency that the protester does not reasonably explain why the solicitation permitted its approach while prohibiting the awardee's approach.

percent of the required labor hours for this CLIN and task No. 6. Comments at 5. The protester argues, therefore, that the awardee's proposal should have been found technically unacceptable.

The CDC responds that the solicitation did not require a minimum number of hours, and that the IGCE did not estimate a minimum number of hours. Instead, the IGCE estimated that price for the three X008 CLINs would be \$3.4 million, which was higher than the awardee's price of \$3.07 million for these CLINs. AR, Tab 33, IGCE; Tab 23, Perspecta Price Proposal at 3.

With regard to the COR's identification of low hours for the X008 CLINs, the award decision specifically addressed this matter, as follows:

Perspecta's proposal was also considered to offer fair and reasonable pricing to the Government. The COR noted that the proposed services matched expectations for the IGCE for all categories except labor hours and private cloud server management costs. These categories are two of the larger categories, but Perspecta was found to make significant use of Automation and Standardizations within their technical solution that could drive these costs down (See Consensus Strengths and Weaknesses, Perspecta, SF 2, Significant Strengths 2 and 3). Further, as discussed in the decision not to conduct a price realism analysis (See D&F Price Realism), the proposal compares favorably to the IGCE - 5 % lower than the IGCE - contains FAR 16.505 approved pricing under the NIH [National Institutes of Health Information Technology Acquisition and Assessment Center] CIO-SP3 [governmentwide acquisition contract], and was submitted in competition. All of these factors lead to the conclusion that Perspecta's proposed price is fair and reasonable to the Government and is suitable for an award.

AR, Tab 7, ADM at 3.

The contracting officer explains that the award decision cited strengths assigned to the awardee's proposal concerning automation and standardization as an explanation why the awardee proposed fewer labor hours and cloud server management costs as compared to the IGCE. See Supp. COS at 6.

Based on our review of the record, we conclude that the agency identified a potential concern regarding the number of hours proposed by Perspecta for the PWS task No. 6 requirements, but concluded that this concern did not merit finding that the proposal as a whole was technically unacceptable. See AR, Tab 7, ADM at 4; Supp. COS at 6. We find that the protester's disagreement with the agency's judgment regarding the acceptability of the awardee's technical proposal, without more, does not provide a basis to sustain the protest.

Evaluation of NTT's Technical Proposal

NTT's remaining arguments concern the CDC's evaluation of its technical proposal. The protester contends that the agency unreasonably evaluated strengths and weaknesses for its proposal, and that the agency should have assigned it a rating of outstanding, rather than acceptable. Supp. Comments at 6. As discussed above, we conclude that the agency reasonably found that NTT's price was not fair and reasonable, and was therefore ineligible for award. As a result, even if we were to sustain NTT's challenges to the evaluation of its proposal under the technical factor, its proposal would not be in line for award because a proposal that does not offer a fair and reasonable price cannot be the subject of an award. See FAR 15.402(a), 15.404-1(a). For this reason, NTT is not an interested party to pursue its remaining challenges to the agency's evaluation of its technical proposal. See *SNAP, Inc.* B-418525, B-418525.2, June 5, 2020, 2020 CPD ¶ 189 at 7. We therefore dismiss NTT's remaining arguments concerning the evaluation of its technical proposal.

The protest is denied.

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General Counsel