

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Deloitte & Touche LLP

File: B-420038

Date: October 28, 2021

David Cohen, Esq., John J. O'Brien, Esq., and Rhina M. Cardenal, Esq., Cordatis LLP, for the protester.

Craig A. Holman, Esq., and Amanda Sherwood, Esq., Arnold & Porter Kaye Scholer LLP, for Ernst & Young LLP, the intervenor.

Catherine Chen, Esq., Michael Giordano, Esq., and Marcela Liddick, Esq., Department of Justice, for the agency.

David A. Edelstein, Esq., and Evan C. Williams, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest of agency's evaluation of protester's technical quotation is denied where the agency reasonably applied the solicitation's evaluation criteria in determining that aspects of the protester's quotation met, but did not exceed, the solicitation's requirements.
 2. Protest of agency's evaluation of awardee's technical quotation is dismissed where the protest fails to identify any violation by the agency of the terms of the solicitation.
 3. Protest of agency's price evaluation methodology is denied because the protester cannot demonstrate competitive prejudice where the agency reasonably found the awardee superior on non-price evaluation factors and the protester cannot demonstrate that the agency should have evaluated its price as lower than the awardee's price.
-

DECISION

Deloitte & Touche LLP, of Arlington, Virginia, protests the award of a blanket purchase agreement (BPA) and task order to Ernst & Young LLP under request for quotations (RFQ) No. 15F06721Q0000167, issued by the Department of Justice, Federal Bureau of Investigation (FBI), for audit support services. Deloitte challenges the agency's evaluation of technical quotations, price evaluation methodology, and best-value tradeoff.

We deny the protest in part and dismiss it in part.

BACKGROUND

On April 12, 2021, the FBI issued the RFQ using the Federal Supply Schedule (FSS) procedures of Federal Acquisition Regulation (FAR) subpart 8.4, under General Services Administration (GSA) Multiple Award Schedule 541661 (Administrative Management and General Management Consulting Services).¹ Agency Report (AR), Tab 3, RFQ at 1-2.² The RFQ sought quotations for audit support services in support of the FBI's Office of Internal Auditing. *Id.* at 5. The RFQ contemplated issuance of a single BPA for a 1-year base period and four 1-year option periods.³ *Id.* at 5, 10.

The RFQ instructed vendors to submit their quotations in six volumes, including a past performance volume, a technical volume, and a price volume. *Id.* at 26. The RFQ provided that award would be made on a best-value tradeoff basis, considering the following evaluation factors: past performance, technical quote, and price.⁴ *Id.* at 30. The two non-price evaluation factors were listed in descending order of importance, and when combined were significantly more important than price. *Id.*

With respect to past performance, the RFQ required vendors to provide three past performance examples "that convey the Quoter's experience and qualifications for performance of requirements of the same scope and magnitude of this RFQ." RFQ at 27. The RFQ stated that the agency would evaluate "the extent to which the three (3) Past Performance examples demonstrate relevant experience for contracts of similar scope and magnitude as the requirements in this RFQ," and would assign a confidence rating based on "the combination of the relevancy and quality of the examples provided, which are equal in weight." *Id.* at 30.

As to the technical evaluation factor, the RFQ stated that the agency would evaluate three subfactors, listed in descending order of importance, as follows:

¹ The FSS program is also known as the GSA schedules program or the multiple-award schedule program. See FAR 8.402(a).

² The solicitation was amended once, on May 3, 2021. Citations to the RFQ are to the conformed copy through amendment 1. AR, Tab 3, RFQ.

³ The RFQ also contemplated the award of a task order (*i.e.*, Task Order 1) for an executable audit process for the FBI's Foreign Intelligence Surveillance Act program, to be awarded immediately following award of the BPA. *Id.* at 8. The RFQ described Task Order 1 as "indicative of how the Contractor shall apply their capabilities," but stated that it was not necessary for vendors to submit a quotation for Task Order 1 with their quotations for the BPA. *Id.*

⁴ A third non-price factor, top secret facility clearance level (TS FCL), would be evaluated on a pass/fail basis, but would not be considered as part of the tradeoff decision among vendors who achieved a passing rating. See RFQ at 30-32. This factor is not relevant to the protest.

14.2.1.2.1 TECHNICAL APPROACH

The Government will evaluate the Quoter's approach for the processes that the Quoter will use to perform the range of possible BPA audit/risk assessment requirements specified in the RFQ. The Government will evaluate the Quoter's approach to conducting audits of individual programs that identify potential patterns of deficiencies that will support broader enterprise-wide risk assessments.

14.2.1.2.2 STAFFING PLAN

The Government will evaluate the degree / extent that the Quotation demonstrates the ability to meet all staffing requirements of the BPA, to include the ability to staff each of the [labor categories] listed in this RFQ. The Government will evaluate the degree / extent that the Quotation demonstrates the Quoter's ability to recruit and retain cleared staff in support of this effort. The Government will evaluate the degree / extent that the Quotation demonstrates the Quoter's clear understanding of the Government's requirements and its ability to fully staff Task Orders within 30 days of each TO [task order] award.

14.2.1.2.3 KEY PERSONNEL

The Government will evaluate the degree / extent that the résumés demonstrate the expertise, education, and certificates (if applicable) for the labor category.

RFQ at 31. The RFQ instructed vendors to address each of these subfactors in the technical volume of their quotations. *Id.* at 28.

Under the price factor, the RFQ required vendors to submit their prices as fully-loaded hourly labor rates for each of eighteen specified labor categories (LCATs), for the base year and each option year. *Id.* at 28. The RFQ included a Microsoft Excel spreadsheet (referred to as "Attachment B") on which vendors were instructed to enter their proposed labor rates. AR, Tab 4, Attachment B Price Quotation Template. The RFQ stated that the agency would "evaluate the Price of the overall BPA as completed by the Quoter in Attachment B (Pricing Quotation Template)." RFQ at 31. Of note, however, attachment B did not request that vendors quote a total price, nor did it contain any formula to calculate a total price from vendors' quoted hourly rates. *Id.*

Three vendors, including Deloitte and Ernst & Young, submitted quotations by the May 12, 2021 closing date. Contracting Officer's Statement (COS) at 4. After receipt of quotations, the agency convened a source selection evaluation board (SSEB) to evaluate vendors' quotations, which produced a technical consensus evaluation report dated July 19, 2021. AR, Tab 12, SSEB Report.

With respect to Deloitte's quotation, the SSEB identified no significant strengths, two strengths, no weaknesses, no significant weaknesses, and no deficiencies under the

past performance factor. *Id.* at 10-11. The SSEB assigned Deloitte's quotation a rating of green/satisfactory confidence on this factor, the second highest possible rating.⁵ *Id.* at 11. Under the technical factor, the SSEB identified no significant strengths, five strengths, no weaknesses, no significant weaknesses, and no deficiencies in Deloitte's quotation. *Id.* at 11-13. The SSEB assigned Deloitte a rating of green/acceptable on this factor, also the second highest possible rating.⁶ *Id.* at 13-14.

In evaluating Ernst & Young's quotation, the SSEB identified two significant strengths, two strengths, no weaknesses, and no deficiencies under the past performance factor, and assigned Ernst & Young a rating of blue/high confidence, the highest possible rating. *Id.* 14-17. Under the technical factor, the SSEB identified two significant strengths, five strengths, no weaknesses, no significant weakness, and no deficiencies in Ernst & Young's quotation. *Id.* at 17-20. The SSEB assigned Ernst & Young a rating of blue/outstanding on this factor, again the highest possible rating. *Id.* at 21.

In addition to the agency's technical evaluation, the contracting officer and contract specialist evaluated vendors' price quotations and documented their findings in a price analysis report. AR, Tab 13, Price Analysis Report. In performing this analysis, the contracting officer determined that the most reasonable method of comparing vendors' proposed prices was to multiply the proposed rates for each LCAT and year by 1,920 hours (*i.e.*, one full-time equivalent (FTE)), and add together all of the results. COS at 6; see AR, Tab 13, Price Analysis Report at 2. Using this methodology, the agency calculated a total evaluated price of \$19,660,529 for Ernst & Young and \$30,379,546 for Deloitte. AR, Tab 13, Price Analysis Report at 5. Notably, Deloitte proposed a higher labor rate than Ernst & Young for each LCAT in each performance year of the BPA, with Deloitte's labor rates ranging from approximately [DELETED]% higher than Ernst & Young's to more than [DELETED]% higher. Intervenor's Comments at 5-6; *compare* AR, Tab 8, Deloitte's Pricing Quotation Template *with* AR, Tab 11, Ernst & Young's Pricing Quotation Template.

Prior to making an award decision, the source selection authority (SSA) conducted an independent review of the SSEB's technical evaluation. AR, Tab 15, Source Selection Decision Document (SSDD) at 6. The SSA concurred with the adjectival ratings that the SSEB had assigned to Ernst & Young. *Id.* However, with respect to Deloitte, the SSA modified the SSEB's adjectival ratings to blue/high confidence on the past performance factor and blue/outstanding on the technical factor--the highest possible rating under both factors. *Id.* Explaining this decision, the SSA stated:

⁵ The possible adjectival ratings for the past performance factor were, in descending order, blue/high confidence, green/satisfactory confidence, white/neutral, yellow/little confidence, and red/no confidence. AR, Tab 12, SSEB Report at 4.

⁶ The possible adjectival ratings for the technical factor were, in descending order, blue/outstanding; green/acceptable, yellow/marginal, and red/unacceptable. AR, Tab 12, SSEB Report at 5.

After independently reviewing all SSEB findings, I agree with the findings of the SSEB regarding the colors assigned to [a third vendor] and Ernst & Young. However, I feel the color rating assigned to Deloitte should be Blue / High Confidence for Past Performance and Blue / Outstanding for the Technical Quote Evaluation Factor rather than the Green / Satisfactory Confidence Past Performance Rating and Green / Acceptable Technical Quote Rating assigned by the SSEB. While I agree with the individual strengths and weaknesses assigned, I believe that the combination of strengths and weaknesses indicates an exceptional approach and understanding of the requirements. Therefore, I have determined that confidence is high that Deloitte would perform the requirement successfully and the risk of unsuccessful performance is very low. As such, Deloitte shall receive a rating of “Blue / High Confidence” for their Past Performance and “Blue / Outstanding” for their Technical Quote.

Id. Accordingly, the final evaluated price and ratings for Deloitte and Ernst & Young were as follows:

	Deloitte	Ernst & Young
Past Performance	Blue/High Confidence	Blue/High Confidence
Technical Quote	Blue/Outstanding	Blue/Outstanding
Price	\$30,379,546	\$19,660,529

See AR, Tab 15, SSDD at 6.

Importantly, despite deciding to increase Deloitte’s color/adjectival ratings to the highest possible levels, the SSA concluded that Ernst & Young’s quotation was more advantageous to the government on both the past performance and technical factors. *Id.* at 17-19. With respect to past performance, the SSA noted that “[Ernst & Young]’s past performance examples provide more detail into the work they performed that demonstrate the breadth of experience they have to support the various missions of the FBI.” *Id.* at 17. The SSA also noted an area in which Ernst & Young demonstrated experience, but Deloitte did not, and stated that Ernst & Young’s “experience in this area provides confidence they will be able to guide the FBI through these tasks” and “will greatly benefit the FBI’s ability to move more smoothly through the process.” *Id.* Thus, the SSA concluded that while the agency had high confidence in both Ernst & Young and Deloitte, “[Ernst & Young]’s breadth of experience resulted in the Government having higher confidence in them than Deloitte.” *Id.*

With respect to the technical factor, the SSA reached a similar conclusion. *Id.* at 18-19. In particular, the SSA highlighted a benefit possessed by Ernst & Young’s key personnel candidates that Deloitte’s candidates did not share, and concluded

that Ernst & Young “has a slight technical advantage for the added benefits outlined above.” *Id.*

Based on these findings, the SSA concluded that Ernst & Young’s quotation represented the best overall value to the government. The SSA wrote: “In summary, [Ernst & Young] is superior in both the Past Performance and Technical Factors while also having the lowest price. Based on the superior ratings and lower price, Ernst & Young LLP[] represents the best overall value to the FBI and will be awarded this BPA.” *Id.* at 19.

On July 21, 2021, the agency awarded the BPA to Ernst & Young, and provided Deloitte with both notice of the award and a brief explanation of the basis of award.⁷ Protest at 2. On August 2, Deloitte timely protested to our Office.

DISCUSSION

Deloitte argues that the agency’s technical evaluation of its quotation was unreasonable because the agency failed to recognize strengths in its quotation, including Deloitte’s past FBI experience, the experience of its subject-matter experts, and certain proprietary tools and techniques that it proposed to use. Protest at 13-22. Deloitte further argues that the agency unreasonably failed to evaluate the risk inherent in Ernst & Young’s quotation. *Id.* at 22-23. With respect to price, Deloitte argues that the agency’s evaluation was unreasonable because it did not provide for meaningful comparison of the actual cost to the agency of each vendor’s quotation. *Id.* at 6-13. Finally, Deloitte argues that the agency’s best-value tradeoff was unreasonable because it failed to follow the weightings specified in the RFQ. *Id.* at 23-24.

Where, as here, an agency issues an RFQ under the FSS procedures of FAR subpart 8.4 and conducts a competition, we will review the record to ensure that the agency’s evaluation is reasonable and consistent with the terms of the solicitation. *Digital Solutions, Inc.*, B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 3-4; *DEI Consulting*, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2.

As discussed below, we have reviewed the protester’s allegations and conclude that there is no basis to sustain Deloitte’s protest of the award of the BPA to Ernst & Young.⁸ We find that the agency reasonably evaluated Deloitte’s quotation, and we

⁷ It is not apparent from the record whether the agency awarded Task Order 1 to Ernst & Young following award of the BPA, as anticipated by the RFQ. See RFQ at 8.

⁸ Deloitte’s protest of the issuance of Task Order 1 to Ernst & Young is dismissed. Our Bid Protest Regulations require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. 4 C.F.R. §§ 21.1(c)(4), (f); *Lion Vallen, Inc.*, B-418503, B-418503.2, May 29, 2020, 2020 CPD ¶ 183 at 15 n.6. Deloitte’s protest does not set forth any legal or factual grounds for its protest of the award of Task Order 1, and it is not clear from the record that Task

(continued...)

dismiss Deloitte's challenge to the agency's evaluation of Ernst & Young's quotation. Accordingly, Deloitte's protest provides no basis to disturb the agency's conclusion that Ernst & Young's quotation was more advantageous to the government on both of the non-price evaluation factors. Because of this, and because Deloitte has not argued that the agency should have evaluated its price as lower than Ernst & Young's, we also find that Deloitte cannot demonstrate competitive prejudice from any alleged error in the agency's price evaluation. Further, since we do not sustain any of Deloitte's challenges to the agency's technical or price evaluation, we dismiss its derivative challenge to the agency's best-value tradeoff.

Technical Evaluation of Deloitte

Deloitte challenges the agency's evaluation of its technical quotation on the ground that the FBI did not give proper credit to certain "discriminators" in Deloitte's favor, which Deloitte claims should have resulted in the FBI concluding that its quotation was more technically advantageous than Ernst & Young's. Protest at 13-22. The discriminators include Deloitte's past corporate experience with the FBI, the past FBI experience of Deloitte's proposed subject matter experts (SMEs), certain Deloitte proprietary tools, and the testing and reporting features that Deloitte proposed to use. *Id.*

In response, the agency contends that it reasonably evaluated Deloitte's technical quotation and that it reasonably determined that the elements of Deloitte's quotation that Deloitte identifies in its protest met, but did not exceed the RFQ's requirements. Memorandum of Law (MOL) at 4-16.

In reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate quotations; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. *Castro & Co., LLC*, B-415508.10, June 11, 2019, 2019 CPD ¶ 215 at 4. A protester's disagreement with the agency's judgment, without more, does not establish that an evaluation was unreasonable. *Creoal Consulting, LLC*, B-419460; B-419460.2, Mar. 4, 2021, 2021 CPD ¶ 148 at 8. Further, an agency's judgment that the features identified in a quotation did not significantly exceed the requirements of the solicitation, and thus did not warrant the assessment of unique strengths, is a matter within the agency's discretion and one that our Office will not disturb where the protester has failed to demonstrate that the evaluation was unreasonable. See *UDC USA, Inc.*, B-419671, June 21, 2021, 2021 CPD ¶ 242 at 7. In this respect, an agency is not required to

(...continued)

Order 1 has been awarded. In any event, as we deny Deloitte's protest of the award of the BPA to Ernst & Young for the reasons discussed below, Deloitte is not eligible to receive a task order under the BPA and is therefore not an interested party to challenge award of a task order under the BPA. See *MINACT, Inc.*, B-414615, B-414615.2, July 12, 2017, 2017 CPD ¶ 221 at 3-4.

document all “determinations of adequacy” or explain why it did not assess a strength, weakness, or deficiency for a particular item. See *id.*

Deloitte first argues that the agency should have considered Deloitte’s prior FBI experience as a discriminator in its favor. Deloitte contends that this experience is relevant to the technical approach and staffing plan subfactors under the technical factor.⁹ Protest at 15. We disagree.

The RFQ’s description of these subfactors required the agency to evaluate vendors’ “approach to conducting audits” and “the degree / extent that the Quotation demonstrates the Quoter’s clear understanding of the Government’s requirements.” RFQ at 31. In other words, the RFQ clearly informed vendors that the agency would examine the features and capabilities that vendors described in their quotations, and determine how well those features and capabilities met or exceeded the agency’s needs. The RFQ neither required the agency to evaluate whether vendors had prior FBI experience, nor informed vendors that the agency would evaluate vendors with such experience more favorably. For this reason, the agency explains that it did not believe that Deloitte’s prior FBI experience warranted the assessment of a strength. COS at 8. Deloitte’s contention that the agency was required to view its prior FBI experience as a strength is not supported by the text of the RFQ. An agency is not required to consider past performance in assessing technical capability where, as here, the solicitation does not provide that past performance will be considered as part of the technical evaluation. See *Raymond Associates, LLC*, B-299496, B-299496.2, May 29, 2007, 2007 CPD ¶ 107 at 6. As a result, we find nothing unreasonable in the agency’s determination that Deloitte’s past FBI experience did not warrant assessment of a strength.

Deloitte next argues that the prior FBI experience of its SMEs should have been a discriminator in its favor. Here, it is unclear what evaluation factor or subfactor Deloitte believes should have been affected. The SMEs that Deloitte discusses in its protest were identified as part of its quotation’s discussion of the technical approach subfactor. See Protest at 17-18; AR, Tab 6, Deloitte’s Technical Quote at 7-8. But, as discussed above, prior FBI experience was not a required consideration under this subfactor. Further, under the key personnel subfactor, the RFQ required that vendors submit résumés for only two positions: audit partner and program manager. RFQ at 28. The RFQ stated that the agency would evaluate “the degree / extent that the résumés demonstrate the expertise, education, and certificates (if applicable) for the labor category.” Deloitte provided the two required résumés, and received evaluated strengths for both of them. AR, Tab 6 at 21-26; SSEB Report at 13. And, the agency’s evaluation of Deloitte even included recognizing a strength for the program manager’s past FBI experience. SSEB Report at 13 (“The candidate also demonstrated familiarity with the FBI and specifically the Finance and Facilities Division, as the candidate has

⁹ Notably, the past performance volume of Deloitte’s quotation did not identify any prior projects for the FBI. See SSEB Report at 11; Protest at 14-16.

served as the Program Manager for a different FBI BPA for the past four (4) years.”). Thus, based upon our review of the record, we find no basis to question the agency’s conclusion that (other than the strengths assessed under the key personnel subfactor) Deloitte’s proposed SMEs met, but did not exceed the RFQ’s requirements.

Next, Deloitte argues that certain proprietary tools should have been considered discriminators in its favor, including Deloitte’s “[DELETED],” “[DELETED],” “[DELETED],” and “[DELETED]” tools. Protest at 19-21. In response, the agency explains that the RFQ established a high minimum standard for an acceptable level of quality, and that the agency’s evaluators believed that Deloitte’s quotation—including its references to its proprietary tools—met, but did not exceed, the RFQ’s requirements. COS at 10.

In this respect, the agency notes that the technical volume of Deloitte’s quotation made only cursory reference to its proprietary tools, and did not explain why or how these tools exceeded the RFQ’s requirements. *Id.* See, e.g., AR, Tab 6, Deloitte’s Technical Quote at 10 (“We will leverage, Deloitte accelerators such as [] [DELETED] and our [DELETED] in addition to other external resources.”). Vendors are responsible for submitting a well-written quotation with adequately detailed information that allows for meaningful review by the procuring agency. *8 Consulting, LLC*, B-417471, July 9, 2019, 2019 CPD ¶ 250 at 5. Here, where Deloitte’s quotation mentioned its proprietary tools without explaining how they exceeded the agency’s requirements, we find nothing unreasonable about the agency’s conclusion that the references to these tools in Deloitte’s quotation did not warrant assessment of a strength.

Similarly, Deloitte argues that its plan to test [DELETED], and its approach to provide a [DELETED] report in addition to an audit report should have been considered discriminators in its favor. Protest at 21-22. Here, the agency explains that its evaluators found that Deloitte’s plan to “test” [DELETED] was, in reality, a plan to use analytics to identify transactions requiring follow-up analysis, and that Deloitte’s [DELETED] report did not reflect any information outside the scope of what the agency expected to receive in a traditional audit report. COS at 11. Again, the agency’s evaluators viewed these features of Deloitte’s quotation as meeting, but not exceeding, the RFQ’s stringent quality requirements. *Id.* at 11-12. An agency is not required to document all determinations of adequacy. See *UDC USA, Inc., supra* at 7. Further, Deloitte’s protest of the agency’s evaluation of these features of its quotation constitutes disagreement with the agency’s judgment, which without more, does not establish that the evaluation was unreasonable. See *Systems Integration & Development, LLC*, B-417858.6, *et al.*, Nov. 2, 2020, 2020 CPD ¶ 376 at 5. Accordingly, we find nothing unreasonable in the agency’s conclusion that these elements of Deloitte’s quotation did not warrant assessment of strengths.

Technical Evaluation of Ernst & Young

Deloitte’s final challenge to the agency’s technical evaluation is its argument that the agency failed to properly consider the risks inherent in Ernst & Young’s quotation. Deloitte argues that Ernst & Young’s lack of experience with FBI systems, policies, and

procedures poses an inherent performance risk. Protest at 22-23. Deloitte further argues that Ernst & Young's low price shows either aggressive discounts or reliance on junior personnel, which also creates a risk to successful performance. *Id.* at 23. We dismiss these grounds of protest.¹⁰

Our Bid Protest Regulations require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. 4 C.F.R. § 21.1(c)(4), (f) (2012); *Midwest Tube Fabricators, Inc.*, B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3. These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. *Id.* Protest allegations that fail to demonstrate a likelihood that the agency violated the terms of the solicitation are legally insufficient and will be dismissed. See, e.g., *American Electronics, Inc.*, B-419659, B-419659.2, May 25, 2021, 2021 CPD ¶ 218 at 6.

Deloitte's argument that the agency failed to evaluate the risk of Ernst & Young's alleged lack of prior FBI experience lacks a sufficient legal and factual basis. Deloitte provides some factual support for its assertion that Ernst & Young does not have substantial prior experience with the FBI, see Protest at 16 and exh. 3; however, as discussed above, FBI experience was not an evaluation criterion under any factor or subfactor identified in the RFQ. Instead, the RFQ provided that the agency would evaluate vendors' approach to the RFQ's requirements as set forth in the vendors' quotations, and the degree to which vendors' quotations demonstrated understanding of the agency's requirements. RFQ at 31. Deloitte has made no allegations regarding any aspect of Ernst & Young's quotation, or any agency error in evaluating that quotation. Accordingly, Deloitte has failed to allege that the agency violated the terms of the solicitation in evaluating Ernst & Young's quotation, and has not alleged a legally or factually sufficient protest in this respect. See *American Electronics, Inc.*, *supra*.

Deloitte's argument that the agency failed to consider the risks inherent in Ernst & Young's low price also lacks a sufficient basis. An agency's assessment of whether a vendor's price is too low, for the purpose of assessing the risk inherent in a vendor's quotation, is a price realism evaluation. See *CRAssociates, Inc.*, B-414171.2, B-414171.3, Jan. 16, 2018, 2018 CPD ¶ 87 at 3. Here, the RFQ did not contain any provision for a price realism evaluation. See RFQ at 31 (stating only that the agency's price evaluation would assess "completeness and reasonableness"). Where a solicitation does not inform vendors that the agency will evaluate prices for realism,

¹⁰ The agency requested dismissal of these grounds of protest in a request for partial dismissal filed prior to submission of the agency report. Req. for Partial Dismissal at 17-23. On August 18, our Office informed the parties that we intended to dismiss these protest grounds and that no further argument or briefing was requested. Ruling on Req. for Partial Dismissal at 1.

agencies are neither required nor permitted to evaluate price realism. *PricewaterhouseCoopers Public Sector LLP*, B-415129.3, July 31, 2018, 2018 CPD ¶ 272 at 3. Further, an argument that an agency should have assessed technical risks based on the awardee's unrealistically low price, even if styled as a challenge to the agency's technical evaluation, is in actuality a price realism argument. *Id.* Where, as here, the solicitation does not provide for a price realism assessment, such an argument lacks a valid basis and will be dismissed.

In sum, we do not sustain any of Deloitte's challenges to the agency's technical evaluation. Against this backdrop, we find the agency's ultimate conclusion that Ernst & Young was more advantageous to the government on both the past performance and technical evaluation factors to be reasonable and supported by the contemporaneous record.

Price Evaluation

In addition to its challenges to the agency's technical evaluation, Deloitte challenges the agency's evaluation of vendors' prices. Protest at 6-13. Deloitte argues that the agency would need varying labor hours from each of the LCATs during performance of the BPA, and that therefore the agency's methodology of price evaluation (weighting all LCATs equally) provides no insight regarding the likely cost of awarding the BPA to one versus another of the vendors. Protest at 6-13; *see, e.g., Veterans Evaluation Servs., Inc.*, B-412940 *et al.*, July 13, 2016, 2016 CPD ¶ 185 at 17-18 (sustaining protest where evaluation of line item pricing without reference to estimated quantities provided no insight regarding relative total cost).

In response, the agency contends that its evaluation of vendors' prices was reasonable because it was consistent with the RFQ and based on the agency's best estimate of the actual costs it would incur over the life of the BPA. MOL at 17.

As a preliminary matter, the agency requested that our Office dismiss Deloitte's protest of the price evaluation as an untimely challenge to the terms of the RFQ. *See* Req. for Partial Dismissal at 3-12. We declined to do so. When a solicitation is silent on the question of how an agency will calculate total evaluated price for source selection purposes, our Office will entertain a timely-filed post-award protest of the reasonableness of the agency's chosen methodology. *See, e.g., Veterans Evaluation Servs., Inc., supra.* at 14-19. In contrast, where the agency explicitly sets forth its price evaluation methodology in the solicitation, any challenge to that methodology must be raised prior to the time set for receipt of quotations. *See, e.g., The Bridge General Trading and Contracting Co.*, B-417085.2 *et al.*, July 24, 2019, 2019 CPD ¶ 265 at 6.

In our view, despite the agency's argument to the contrary, the RFQ in this case did not disclose the agency's intended price evaluation methodology to vendors. Specifically, the RFQ instructed vendors to submit their prices on the "Attachment B" spreadsheet, and stated that the agency would "evaluate the Price of the overall BPA as completed by the Quoter in Attachment B." RFQ at 28, 31. However, neither the text of the RFQ nor attachment B provided any indication as to how the agency intended to calculate a

total price for evaluation purposes from the per-LCAT hourly rates that the RFQ requested and that vendors provided for each of the BPA years. See *id.*; AR, Tab 4, Attachment B Price Quotation Template at 1. In fact, the agency's argument that its intended price evaluation methodology was disclosed in the RFQ is contradicted by its concession that it first decided upon this methodology after receipt of quotations and as part of its price evaluation process. See COS at 6. Accordingly, we find that Deloitte's post-award protest of the agency's price evaluation is timely.¹¹

Nevertheless, we need not determine whether the agency's price evaluation methodology was reasonable because Deloitte has failed to demonstrate that it was competitively prejudiced by any error in the agency's evaluation of vendors' prices. Competitive prejudice is an essential element of a viable protest. *Catalyst Sols., LLC*, B-416804.3, B-416804.4, April 4, 2019, 2019 CPD ¶ 134 at 5. Where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest. *Id.*

Deloitte argues it suffered competitive prejudice from the agency's price evaluation because the agency must consider the extent of the price difference between Deloitte and Ernst & Young in conducting its best-value tradeoff between the price and technical factors. See Comments at 7-8. The record establishes, however, that no price/technical tradeoff is required here. As discussed above, the agency reasonably concluded that Ernst & Young's quotation was superior to Deloitte's on the non-price evaluation factors. And, Ernst & Young's quotation was lower-priced than Deloitte's quotation. Where the highest-rated, lowest-priced quotation is selected for award, a tradeoff is not required. *Katmai Health Servs., LLC*, B-413816.3, July 12, 2017, 2017 CPD ¶ 220 at 6; see also *Catalyst Sols., LLC supra* at 6 (“[I]nsofar as [awardee] would remain both higher technically-rated and lower-priced than [protester], no price/technical tradeoff would be required as part of the SSA's determination that [awardee's] proposal represented the overall best value to the government.”).

In order for Deloitte to demonstrate competitive prejudice from the agency's price evaluation, therefore, it would have to demonstrate that its price should have been evaluated as lower than Ernst & Young's price so that a price/technical tradeoff would

¹¹ In this respect, we note that the agency's price analysis report states that vendors were provided with pre-award notice of the agency's intended evaluation methodology. AR, Tab 13, Price Analysis Report at 2. However, the protester alleges that it first learned of the agency's methodology as part of its post-award brief explanation. Protest at 6-7. There is no evidence in the agency report, nor did the agency argue in its request for dismissal, that Deloitte actually learned of the agency's methodology prior to award. See *generally*, AR, Req. for Partial Dismissal at 3-12. In any event, our Office resolves doubt surrounding timeliness of a protest in favor of the protester where there is disagreement as to when the protester first knew the basis of its protest. *Eskanos Enterprises*, B-419391, Feb. 1, 2021, 2021 CPD ¶ 39 at 4.

have been required. However, Deloitte has not provided our Office with any proposed price evaluation methodology in which Deloitte's overall price would be evaluated as lower than Ernst & Young's price. And, because the record establishes that Deloitte proposed a higher price than Ernst & Young on every single LCAT for each of the BPA years, it does not appear to our Office that such a methodology exists. See Intervenor's Comments at 5-6; *compare* AR, Tab 8, Deloitte's Pricing Quotation Template *with* AR, Tab 11, Ernst & Young's Pricing Quotation Template. In short, the most favorable outcome that Deloitte could achieve from a successful challenge to the agency's price evaluation methodology is to have its price evaluated as closer to--but still higher than--Ernst & Young's price. Given the agency's reasonable conclusion that Ernst & Young was superior on both non-price evaluation factors, this is not sufficient to demonstrate competitive prejudice. Consequently, Deloitte's protest of the agency's price evaluation methodology is also denied.

Best-Value Determination

Finally, Deloitte argues that the agency's tradeoff analysis was flawed because it was based on miscalculation of vendors' quotations on the technical and price factors. See Protest at 23-24; Comments at 23-27. This allegation is derivative of Deloitte's challenges to the agency's evaluation, all of which we have either dismissed or denied. Thus, we dismiss this allegation because derivative allegations do not establish independent bases of protest. *Advanced Alliant Solutions Team, LLC*, B-417334, Apr. 10, 2019, 2019 CPD ¶ 144 at 6.

The protest is denied in part and dismissed in part.

Edda Emmanuelli Perez
General Counsel