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Decision

Matter of: ACI Technologies, Inc.

File: B-420129

Date: December 10, 2021

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DIGEST

Agency reasonably evaluated proposals under technical, past performance, and cost evaluation factors and properly made award on the basis of awardee's technically superior, lower-priced proposal.

DECISION

ACI Technologies, Inc., of Philadelphia, Pennsylvania, protests the Department of the Navy's award of a contract to The Pennsylvania State University (PSU), of State College, Pennsylvania, pursuant to request for proposals (RFP) No. N00014-20-R-0006, for the operation and management of the Navy's electronics manufacturing center. ACI protests multiple aspects of the agency's source selection process, asserting, among other things, that the agency "failed to . . . properly evaluate proposals under the technical, past performance and cost factors." Protest at 1.

We deny the protest.

BACKGROUND

Pursuant to the provisions of 10 U.S.C. § 2501(a), the Secretary of Defense has established a "Manufacturing Technology [ManTech] Program" to further national security objectives. Agency Report (AR), Tab 1B, RFP Statement of Work (SOW) at 2. The ManTech program is intended to "improve the manufacturing quality, productivity, technology and practices of business and workers providing goods and services to the Department of Defense [DOD]." *Id.* Pursuant to DOD Directive 4200.15, the various

military departments operate their own ManTech programs and, in that context, the Navy's ManTech program is implemented through its operation of seven Centers of Excellence (COE).¹ AR, Tab 7B, Contracting Officer's Statement at 1. The solicitation elaborates that the Navy's ManTech program is focused on "affordability improvements" for "key acquisition platforms," which currently include "the CVN 78 Class carrier; DDG 51 Class destroy, FFG(X) Guided missile frigate; VIRGINIA Class submarine/OHIO Replacement Program; and the Joint Strike Fighter (JSF)." SOW at 2.

ACI's protest challenges the agency's award of a contract to PSU for operation of the Navy's electronics manufacturing COE; ACI has been the incumbent contractor for that COE since 1995. PSU is the incumbent contractor for the Navy's electro-optics manufacturing COE (also referred to as the "Center for Advanced Manufacturing of Electro Optics" or "CAMEO.") Contracting Officer's Statement at 2, 14.

On April 20, 2020, the agency posted the solicitation on the System for Award Management (SAM) website,² seeking proposals for award of a single indefinite-delivery indefinite-quantity (IDIQ) contract under which cost-type task orders will be issued. RFP at 6. The solicitation provided that source selection would be based on a best-value tradeoff between the following evaluation factors: (1) COE operations/management and business operations; (2) project development/management; (3) key personnel/staffing; (4) small business participation; (5) facilities; (6) cost share; (7) past performance;³ and

¹ Each COE is responsible for a particular technological area (for example, as relevant here and discussed below, one Navy COE is responsible for electronics manufacturing; another is responsible for electro-optics manufacturing). The COEs "serve as focal points for the development and technology transfer of new and advanced manufacturing processes and technology in a cooperative environment with industry, academia, and the Naval Research Enterprise." SOW at 2.

² At that time, the website was referred to as "Beta SAM." AR, Tab 5B, Source Selection Decision at 3.

³ Factors one through six are referred to as technical factors and are listed in descending order of importance. RFP at 57, 77-85. The solicitation provided that the agency would assign adjectival ratings of outstanding, good, acceptable, marginal, or unacceptable under these factors. With regard to factor seven, past performance, the solicitation: directed offerors to submit no more than three past performance references, which would be assessed for recency/relevance; stated that relevance would be assessed by comparing the similarity in magnitude, scope, and complexity of the references to the requirements of this solicitation; and provided that proposals with recent/relevant past performance would be assigned confidence ratings of substantial confidence, satisfactory confidence, limited confidence, no confidence, and unknown confidence under that factor. *Id.* at 64-65, 84. Finally, the solicitation provided that factors one through seven, when combined, were significantly more important than cost/price (factor eight). *Id.* at 85.

(8) cost/price.⁴ *Id.* at 77-85. Finally, the solicitation provided that the first task order would relate to COE operations/management (the most important evaluation factor) and the second task order would relate to project development/management (the second-most-important evaluation factor), and that both task orders would be issued at the time of award. See SOW at 5; RFP at 57, 60.

On or before the June 24, 2020 closing date, proposals were submitted by ACI and PSU; thereafter, the proposals were evaluated. ACI's initial proposal reflected a cost/price of \$10,644,077; PSU's proposal reflected a cost/price of \$10,352,987. See AR, Tab 3C, Cost Evaluation (ACI) at 1; Tab 3D, Cost Evaluation (PSU) at 1. In evaluating ACI's initially proposed cost/price, the contracting officer noted that ACI's indirect rates were "predicated on the use of Provisional Billing Rates on file with DCAA [Defense Contract Audit Agency]"; accordingly, the contracting officer "[took] no exceptions to application of [those rates.]" AR, Tab 4D, Discussion Documents (ACI) at 17-19.

On December 15, 2020, ACI and PSU were both notified that their proposals would be included in the competitive range and that the agency would subsequently conduct discussions. AR, Tab 4B, Notice to ACI; Tab 4C, Notice to PSU.

On January 5, 2021, the DCAA sent a letter to ACI, advising ACI that its provisional billing rates had been increased.⁵ DCAA's letter directed ACI to "immediately begin using the established revised billing rates in preparing requests for interim contract payments." AR, Tab 8B, Letter from DCAA to ACI, Jan. 5, 2021, at 1.

After the Navy completed its evaluation of initial proposals, it sent each offeror a copy of the agency's evaluation of that offeror's proposal under each evaluation factor. AR, Tab 4D, Discussion Documents (ACI); Tab 4E, Discussion Documents (PSU). On February 9 and February 10, 2021, the agency conducted discussions with ACI and PSU, respectively. During discussions, ACI did not advise the agency of DCAA's letter directing ACI to begin using higher billing rates. On February 22, each offeror submitted its final proposal revision (FPR); the proposed cost/price in ACI's FPR continued to reflect its prior (lower) billing rates.

⁴ The solicitation contained assumptions regarding contract requirements/levels of effort on which cost/price proposals were to be based, and provided that an offeror's proposed cost/price would be evaluated for reasonableness and realism. *Id.* at 65-67, 84-85.

⁵ ACI acknowledges that its indirect rates have "increased dramatically," asserting that this constitutes a "periodic rate spike," allegedly caused by "delay" in the agency's award of the protested contract "as well as [by] the global pandemic." ACI further asserts that, as a small business, its indirect rates "are more sensitive to activity levels . . . than larger organizations." Protest at 2, 28-29.

After FPRs had been submitted, the contracting officer learned that ACI's provisional billing rates had been revised and were higher than those reflected in ACI's FPR.⁶ Accordingly, consistent with the solicitation requirements to assess cost realism, see RFP at 84-85, the contracting officer performed a revised cost realism evaluation based on ACI's most recent indirect rates, making upward adjustments to ACI's evaluated cost/price.⁷ AR, Tab 3E, Cost/Price Evaluation Addendum.

In evaluating final proposal revisions under the technical factors, the agency's technical evaluation team (TET) identified various strengths and weaknesses in each proposal. For example, in evaluating ACI's proposal under the most important factor, COE operation/management, the TET identified various strengths, but also criticized ACI's proposed labor mix in that ACI "failed to propose use of the lowest level of staff necessary," noting that ACI's proposal to use senior staff to perform administrative tasks "adds costs that . . . could be put towards . . . project work." AR, Tab 3J, TET Report at 6. In evaluating PSU's proposal under this factor, the TET identified multiple strengths, but also criticized the proposal with regard to the level of technical expertise it demonstrated. *Id.* at 9.

In its evaluation under the second-most-important factor, project development/management, the TET again identified weaknesses in ACI's proposal. For example, the TET criticized ACI's proposal because it contemplated a "time horizon" for standard projects of "5-7 years," which was longer than the 3 years contemplated by the solicitation, and failed to focus on "manufacturing readiness." *Id.* at 11-12. The agency noted that these flaws "could lead to wasted effort in project selection and development." *Id.* Additionally, the TET noted that although a critical element of ACI's proposal was the development of (and reliance on) ACI's "technology investment road map," ACI's proposal failed to state that ACI intended to share this with the agency. *Id.* at 12. In contrast, the TET identified multiple strengths and no weaknesses in PSU's proposal under this evaluation factor. Among other things, the TET noted PSU's demonstration of its "expertise at project management" and capability to "execute projects . . . within project cost, schedule and performance." *Id.* at 13.

⁶ In April 2021, ACI submitted a cost proposal to a different Navy contracting officer for a project under its incumbent contract, and based that proposal on the recently revised rates. Contracting Officer's Statement at 6; Agency Reply to Protester Comments at 7-9.

⁷ At that time, the contracting officer also verified the currency of the rates on which PSU's cost/price proposal was based. AR, Tab 3E, Cost/Price Evaluation Addendum at 5; Contracting Officer's Statement at 4.

Overall, the FPRs were rated as follows:

	ACI	PSU
(1) COE Operations	Good	Good
(2) Project Development	Good	Outstanding
(3) Key Personnel/Staffing	Outstanding	Acceptable
(4) Small Business	Outstanding	Outstanding
(5) Facilities	Outstanding	Outstanding
(6) Cost Share	Outstanding	Outstanding
(7) Past Performance	Substantial Confidence	Substantial Confidence
(8) Cost/Price	\$12,467,592	\$10,056,145

AR, Tab 5B, Source Selection Decision at 7-8, 31.

Thereafter, the source selection authority (SSA)⁸ reviewed the evaluation record, including the proposals and the evaluation reports, considered the adjectival ratings, and compared the strengths and weaknesses of the competing proposals. *Id.* at 1. With regard to the most important evaluation factor, COE operations/management, the SSA noted both proposals contained multiple strengths, along with specific weaknesses, and concluded that the proposals were equivalent under this factor. *Id.* at 29. With regard to the second-most-important factor, project development/management, the SSA noted the evaluated weaknesses in ACI’s proposal discussed above, as well as the multiple strengths and absence of weaknesses in PSU’s proposal, specifically referencing PSU’s “well-defined approach to manage and successfully execute projects . . . within project cost, schedule and performance.” *Id.* at 23. Accordingly, the SSA concluded that PSU’s proposal was superior to ACI’s under this factor. *Id.*

Under the third-most-important factor, key personnel/staffing, the SSA concluded that ACI’s proposal was superior to PSU’s. *Id.* at 30. With regard to factor seven, past performance, the SSA found the proposals to be equal, noting that both offerors are “currently, successfully operating ManTech Centers,”⁹ and concluding that there was “very little [past performance] risk to the Government” in awarding the contract to either offeror.¹⁰ *Id.* at 31.

Based on her assessment of the strengths and weaknesses in each offeror’s proposal, the SSA noted that PSU’s proposal was superior to ACI’s proposal with regard to the

⁸ The SSA was also the contracting officer.

⁹ As noted above, ACI is the incumbent contractor for the Navy’s electronics manufacturing center, the COE at issue here, and PSU is the incumbent contractor for the Navy’s electro-optics COE.

¹⁰ The SSA also found no basis for distinguishing between the proposals under factors four (small business participation), five (facilities), or six (cost sharing).

second-most-important factor, project development/management; that ACI's proposal was superior to PSU's under the third-most-important factor, key personnel/staffing; and that ACI's cost/price was approximately 19% higher than PSU's cost/price. *Id.* at 32. Accordingly, the SSA concluded:

I am unable to reasonably determine that ACI's Key Personnel (Factor 3) alone are worth a 19% premium to the Government, when the proposed PSU technical approach is exceptional and includes strong technical personnel, poses very low risk to the Government for Past Performance, and is the lowest priced offeror.[¹¹]

Id.

Thereafter, the contract was awarded to PSU. This protest followed.

DISCUSSION

ACI protests multiple aspects of the agency's source selection process, asserting, among other things, that the agency "failed to . . . properly evaluate proposals under the technical, past performance and cost factors." Protest at 1. As discussed below, ACI's protest is without merit.¹²

Technical Evaluation

First, ACI complains that the agency's evaluation under the technical factors was unreasonable, challenging the agency's: assessment of strengths in PSU's proposal; assessment of weaknesses in ACI's proposal; and alleged failure to assign additional weaknesses or deficiencies to PSU's proposal. We have considered ACI's multiple arguments and find no merit in them. Below, we discuss representative examples of ACI's arguments that challenge the agency's assessment of weaknesses in ACI's proposal under the two most important evaluation factors.

Factor One, COE Operations/Management

¹¹ The SSA also noted that, even if she had not upwardly adjusted ACI's cost/price to reflect its most recent, higher, indirect rates, her award decision would "remain the same," due to PSU's technical superiority and slightly lower cost/price. AR, Tab 5B, Source Selection Decision at 32. Specifically, the SSA stated: "I do not find [ACI's superiority with regard to] key personnel and staffing approach to be worth any premium." *Id.*

¹² In pursuing this protest, ACI has made arguments that are in addition to, or variations of, those specifically discussed below. Among other things, ACI asserts that the agency: engaged in disparate treatment of the offerors; applied unstated evaluation criteria; failed to conduct meaningful discussions; and failed to perform a reasonable best-value tradeoff. We have considered all of ACI's arguments and find no basis to sustain its protest.

ACI asserts that the agency's assessment of weaknesses in ACI's proposal under factor one was "unreasonable," maintaining that it should have been rated as outstanding, rather than good, under this factor. Protest at 33-42. In this regard, as noted above, the agency assigned a weakness regarding ACI's proposed labor mix, noting that ACI "fail[ed] to propose use of the lowest level of staff necessary," and elaborating that ACI's proposal to perform administrative tasks with senior staff "adds costs that . . . could be put towards . . . project work." AR, Tab 3J, TET Report at 6. ACI protests that this assessment of a weakness was unreasonable because "ManTech Center work is novel" and "overwhelmingly technical in nature"; accordingly, ACI maintains that it was necessary to use senior staff members to perform the COE operations/management work, and that the agency's failure to recognize that rendered the agency's evaluation unreasonable. Protest at 39.

The agency responds that, while developing and managing specific projects (work evaluated under factor two) may involve "novel" work, "most of the task[s] under task order 1 [COE operations/management] are administrative and business in nature."¹³ Memorandum of Law at 25; see AR, Tab 3J, TET Report, at 6. In short, the agency maintains that much of the work relevant to evaluation under factor one does not require senior staff, notwithstanding ACI's assertions to the contrary. Further, the agency notes that it specifically advised ACI during discussions of its concerns regarding ACI's proposed labor mix; yet, ACI's final proposal revision did not meaningfully address that matter. Memorandum of Law at 23-24. Accordingly, the agency maintains that its evaluation of ACI's final proposal revision properly identified a weakness in ACI's proposed approach to performing the solicitation requirements related to COE operations/management.

A procuring agency is responsible for defining its needs and identifying the best method for accommodating them. See, e.g., *U.S. Textiles, Inc.*, B-289685.3, Dec. 19, 2002, 2002 CPD ¶ 218 at 2. Thus, in reviewing a protest challenging the reasonableness of an agency's assessments regarding the best approach to meet its needs, our Office will not substitute our judgment for that of the agency; rather, we will examine the record to determine whether the agency's judgments were reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. See, e.g., *Del-Jen Educ. & Training Grp./Fluor Fed. Sols. LLC*, B-406897.3, May 28, 2014, 2014 CPD ¶ 166 at 8; *FPM Remediations, Inc.*, B-407933.2, Apr. 22, 2013, 2013 CPD ¶ 107 at 3. A protester's disagreement with the agency's evaluation judgments, without more, is insufficient to establish that an evaluation was improper or lacked a reasonable basis. *Lanmark Tech., Inc.*, B-408892, Dec. 19, 2013, 2013 CPD ¶ 295 at 5.

¹³ The agency states the COE management/operation requirements include "management of the Center, submissions of deliverables, providing a website, creating promotional materials, outreach activities, [and] performance and financial management." Memorandum of Law at 25; see AR, Tab 1B, SOW at 6-7.

Here, based on our review of the record, we find nothing unreasonable in the agency's assessment of a weakness in ACI's proposal for proposing more senior staff than the agency judged to be necessary. Further, as the agency notes, ACI was explicitly advised of this concern during discussions, see AR, Tab 4D, Discussion Documents (ACI) at 5; nonetheless, its final proposal revision failed to meaningfully address the agency's concerns. In its protest, ACI continues to assert that the labor mix it proposed was appropriate, and that the agency's assessment of a weakness in this regard was unreasonable. Based on the record here, ACI's protest merely reflects ACI's ongoing disagreement with the agency's judgment on that issue, and its protest in this regard is denied.

Factor Two, Project Development/Management

Next, ACI challenges the agency's assessment of weaknesses in ACI's proposal under evaluation factor two, project development/management. As noted above, the agency assessed weaknesses in ACI's proposal because it: contemplated a performance period for standard projects of "5-7 years," while the solicitation contemplated a 3-year period; failed to focus on "manufacturing readiness"; and failed to state that ACI would provide its "technology investment road map" to the agency. See AR, Tab 3J, TET Report at 11-12. ACI protests that: the agency's criticisms regarding its performance period reflects a "mischaracterization" of ACI's proposal;¹⁴ the solicitation did not "explicitly" require proposals to address manufacturing readiness; and ACI's proposal "makes it clear" that ACI intended to provide its "technology investment road map" to the agency. Protest at 43-46.

The agency, again, responds that it identified each of these issues as concerns by providing ACI with a copy of the agency's evaluation documentation during discussions. See AR, Tab 4D, Discussions Documents (ACI) at 10-11. Specifically, the agency notes that, under the heading "Weaknesses," the agency referred to "the 5-7 years identified in [ACI's] proposal" as being longer than the "36 months for a Standard ManTech Project per [the] SOW." *Id.* at 10. Similarly, the agency's discussion documents advised ACI that its proposal "failed to focus their prioritization on manufacturing readiness . . . [as] referenced in SOW paragraph 3.1.2,"¹⁵ Finally, in conducting discussions with ACI, the agency stated:

A critical element of the offeror's proposal is the development of and reliance on their technology investment road map. . . . While this could

¹⁴ ACI acknowledges that its proposal stated: "ACI currently has multiple seed opportunities . . . that align with ACI Strategic Initiatives . . . to ensure warfighter needs over the coming 5 to 7 years will be met," but maintains that "project duration" would take place during a shorter period. Protest at 44-45.

¹⁵ This section of the SOW states: "The contractor shall endeavor to provide [its] best efforts to provide the Navy with technology readiness and manufacturing level assessments." SOW at 10.

have been integrated into the proposal to create a logical way to fulfill the SOW requirement, the proposal does not mention sharing this with the government.

Id. at 11.

The agency maintains that all of its criticisms of ACI's proposal under this evaluation factor reasonably reflect the statements made in ACI's proposal and/or the solicitation's stated requirements. Further, the agency notes that, despite its clear identification of its concerns to ACI during discussions, ACI's final proposal revision failed to meaningfully address those concerns. Accordingly, the agency maintains that ACI's attempts, in its protest, to "clarify" its proposal and/or dispute the agency's interpretation of the solicitation requirements does not provide a basis for sustaining the protest.

It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation requirements and/or the merits of the offeror's proposal; an offeror that fails to do so risks having its proposal evaluated unfavorably. See, e.g., *STG, Inc.*, B-411415, B-411415.2, July 22, 2015, 2015 CPD ¶ 240 at 5-6; *Johnson Controls, Inc.*, B-407337, Nov. 20, 2012, 2012 CPD ¶ 323 at 4; *Int'l Med. Corps*, B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 8. In this regard, agencies are not required to infer unstated information or make assumptions regarding matters the offeror chose not to address. See, e.g., *Optimization Consulting, Inc.*, B-407377, B-407377.2, Dec. 28, 2012, 2013 CPD ¶ 16 at 9 n.17.

Here, we find no basis to question the reasonableness of the agency's assessment of weaknesses in ACI's proposal under evaluation factor two. We have reviewed the record and conclude that the agency's assessments reasonably reflected ACI's statements in its proposal and the terms of the solicitation. Further, the record is undisputed that the agency explicitly advised ACI of each of its concerns during discussions; yet, ACI's final proposal revision failed to meaningfully address those matters. Now, in its protest, ACI presents arguments that the agency misinterpreted ACI's proposal, applied unstated criteria, and/or was required to draw inferences from ACI's proposal regarding matters that were not stated in the proposal. It was ACI's responsibility to submit a proposal that demonstrated its compliance with the solicitation requirements, and/or the merits of its proposal; this principle is particularly applicable where, as here, an agency brings its concerns to the offeror's attention during discussions. Based on our review of the record, we find no basis to question the agency's assessment of weaknesses in ACI's proposal under evaluation factor two, and deny its protest in that regard.

Past Performance Evaluation

Next, ACI challenges the agency's evaluation under the past performance factor, complaining that the agency unreasonably assigned substantial confidence ratings to both ACI's and PSU's proposals and considered their past performance to be equal. Protest at 2, 50-54; ACI Comments, Oct. 14, 2021, at 2-3, 33-44. Noting that "ACI is the

incumbent,” ACI complains that the agency “ignored” the fact that PSU’s operation/management of the Navy’s electro-optics COE was “less relevant” than ACI’s performance of the incumbent electronics COE contract. *Id.* While acknowledging that there is some “overlap” of requirements between the two contracts, Protest at 53, and that the tasking requirements are “somewhat similar,” ACI Comments, Oct. 14, 2021, at 37, ACI maintains that the specific technologies associated with electronics and electro-optics differ. Accordingly, ACI maintains that PSU should have received a past performance rating of “no higher than satisfactory confidence.” Protest at 54. In short, ACI maintains that, due to its status as the incumbent contractor, the agency was required to evaluate ACI’s past performance as superior to PSU’s and that such superiority “should have [been] a material discriminator.” ACI Comments, Oct. 14, 2021, at 3.

The agency responds that, contrary to ACI’s assertions, the performance requirements of the two contracts “are very similar” with regard to magnitude, scope, and complexity.¹⁶ Contracting Officer’s Statement at 14. In this regard, the agency notes that the two contracts are nearly identical with regard to their structure. More specifically, with regard to COE operation/management, both contracts require the same management, financial, and administrative tasks to operate the respective COEs. With regard to project development, while the specific technologies differ, both contracts require the contractor to identify issues, select candidate projects, and engage in project development, review, and management. The agency notes that, under either contract, the contractor will generally compete approved projects and “select[] companies that are technical experts in the project specific area of expertise to perform as subcontractors,” adding that the contractor “rarely, if ever, executes the actual projects on its own.” *Id.* Accordingly, the agency maintains that, consistent with the terms of the solicitation, the agency reasonably determined that PSU’s performance of the contract to operate the Navy’s electro-optic COE was sufficiently similar in magnitude, scope, and complexity to be considered relevant and that, based on PSU’s qualitative performance under that contract, the agency reasonably assigned it a substantial confidence rating and determined that the two proposals were equal under this factor.

Where a protester challenges an agency’s evaluation of experience or past performance, we will review the evaluation to determine if it was reasonable and consistent with the solicitation’s evaluation criteria and procurement statutes and regulations. See, e.g., *MFM Lamey Grp., LLC*, B-402377, Mar. 25, 2010, 2010 CPD ¶ 81 at 10; *Falcon Envtl. Servs., Inc.*, B-402670, B-402670.2, July 6, 2010, 2010 CPD ¶ 160 at 7. An agency’s evaluation of past performance, including its consideration of the relevance, scope, and significance of an offeror’s performance history, is a matter of discretion which we will not disturb unless the agency’s assessments are unreasonable or inconsistent with the solicitation criteria. *Pricewaterhouse Coopers Public Sector, LLP*, B-415504, B-415504.2, Jan. 18, 2018, 2018 CPD ¶ 35 at 10-11; *SIMMEC Training Sols.*, B-406819, Aug. 20, 2012, 2012 CPD ¶ 238 at 4.

¹⁶ As noted above, the solicitation provided that “[r]elevancy [of a prior contract] will be evaluated based on . . . magnitude, scope and complexity.” RFP at 64, 78, 84.

Based on our review of the record, we find no basis to question the reasonableness of the agency's evaluation under the past performance factor. In challenging the agency's evaluation, ACI primarily asserts that experience with the specific technology related to electronics manufacturing was required in order for an offeror to receive a substantial confidence rating and/or be rated as equal to an offeror with such experience. However, the solicitation did not provide that experience with any specific technology was required for purposes of the agency's assessments; rather, the solicitation provided that the agency would make its relevancy assessments based on the broader criteria of magnitude, scope, and complexity.

Here, the record establishes that the agency gave significant consideration to the magnitude, scope, and complexity of PSU's contract for operation of the Navy's optic-electro COE. Specifically, as discussed above, the agency determined that PSU's contract was structured in a manner nearly identical to ACI's contract for operation of the electronics manufacturing COE, and that, while the specific technologies involved were different, the basic tasking requirements were the same. Accordingly, the agency concluded that PSU's contract to operate the Navy's electro-optic COE constituted very relevant past performance, and that the quality of PSU's performance under that contract merited a substantial confidence rating. On this record, ACI has failed to establish a basis for questioning the reasonableness of the agency's evaluation. More specifically, ACI's assertion that the agency was required to consider incumbent performance as superior to non-incumbent performance is without merit, and its protest in that regard is denied.

Cost/Price Evaluation

Finally, ACI protests that the agency's cost realism analysis regarding ACI's proposed cost/price was "unreasonable" because it reflected the agency's consideration of ACI's recently revised billing rates. Protest at 25-33. In this regard, ACI acknowledges that its indirect rates "increased dramatically" after ACI submitted its initial proposal, but maintains that this increase was a short-term "aberration" caused by the agency's "delay" in awarding the contract and reduced revenue due to the pandemic.¹⁷ The protester complains that the agency did not re-open discussions with, or seek clarification from, ACI regarding this matter.¹⁸ *Id.*

The agency responds by first noting that the solicitation specifically advised offerors that the agency would make a "probable cost" estimate by adjusting specific elements of an offeror's proposed costs to reflect "realistic levels"; warned that the agency's most

¹⁷ ACI explains that its indirect rates increased due to lower levels of "business activity" than it expected. Protest at 29.

¹⁸ ACI also asserts that the PSU's evaluated cost/price should have been higher due to "start-up costs." Protest at 32-33. We have reviewed the record and find no basis to question the agency's evaluation of PSU's proposed cost/price.

probable cost calculation “may differ from the offeror’s proposed cost”; and directed each offeror to “submit any documentation they deem relevant to substantiate their proposed cost.” See RFP at 65-66. Next, the agency notes that it conducted discussions with ACI shortly after DCAA notified ACI of its revised billing rates; yet, despite ACI’s purported desire for an opportunity to address the “aberration” reflected by those rates, ACI did not do so during discussions--and its final proposal revision continued to reflect the lower rates. Contracting Officer’s Statement at 11. Next, the agency maintains that it reasonably concluded that, if awarded the contract, ACI would bill at its recently revised, higher rates; accordingly, the agency performed its most probable cost evaluation based on application of ACI’s most recent rates. *Id.* Finally, the agency notes that, in the contemporaneous source selection decision, the SSA specifically stated that even if she had not upwardly adjusted ACI’s cost/price, the award decision would “remain the same,” due to PSU’s technical superiority and its lower cost/price. AR, Tab 5B, Source Selection Decision at 32. Accordingly, the agency maintains that it reasonably evaluated ACI’s cost/price and, in any event, ACI’s protest fails to establish any prejudice to ACI flowing from that evaluation. We agree.

When an agency evaluates proposals for the award of a cost-reimbursement contract or task order, an offeror’s proposed costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. FAR 6.505(b)(3), 15.305(a)(1); *Tatitlek Techs., Inc.*, B-416711 *et al.*, Nov. 28, 2018, 2018 CPD ¶ 410 at 14; *Engility Corp.*, B-413120.3 *et al.*, Feb. 14, 2017, 2017 CPD ¶ 70 at 18. Consequently, an agency 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)(1), 16.505(b)(3); *Solers Inc.*, B-409079, B-409079.2, Jan. 27, 2014, 2014 CPD ¶ 74 at 4. An agency’s cost realism analysis requires the exercise of informed judgment, and we review an agency’s judgment in this area only to see that the cost realism analysis was reasonably based and not arbitrary. *Cascade Gen., Inc.*, B-283872, Jan. 18, 2000, 2000 CPD ¶ 14 at 8.

Additionally, competitive prejudice is an essential element of a viable protest. Where a 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, even if deficiencies in the procurement are found. See, e.g., *HP Enter. Servs., LLC*, B-411205, B-411205.2, June 16, 2015, 2015 CPD ¶ 202 at 6; *Interfor US, Inc.*, B-410622, Dec. 30, 2014, 2015 CPD ¶ 19 at 7; *Special Servs.*, B-402613.2, B-402613.3, July 21, 2010, 2010 CPD ¶ 169 at 4.

Here, while our review of the record does not provide any basis for us to question the reasonableness of the agency’s evaluation of ACI’s proposed cost/price, we need not further address that matter. As discussed above, we have concluded that the agency reasonably determined that PSU’s proposal was technically superior to ACI’s proposal. Further, there is no dispute that ACI’s proposed cost/price was higher than PSU’s, and ACI has identified no meaningful basis for challenging the agency’s evaluation of PSU’s proposed cost/price. On this record, we find no basis to question the agency’s award to PSU on the basis of its technically-superior, lower-cost/priced proposal.

The protest is denied.

Edda Emmanuelli Perez
General Counsel