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Decision

Matter of: NTT Data Services Federal Government, LLC

File: B-420274; B-420274.2

Date: January 18, 2022

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DIGEST

1. Protest challenging evaluation of awardee's corporate experience is dismissed where the protester's allegations, which rely upon assumptions and characterizations concerning the solicitation that are not supported by those documents, do not establish a valid basis of protest.
 2. Protest challenging the agency's evaluation of technical proposals is denied where the evaluation was reasonable and consistent with the solicitation.
 3. Protest challenging the agency's cost realism evaluation of the protester's proposal is denied where the record demonstrates the agency's conclusions were reasonable.
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DECISION

NTT Data Services Federal Government, LLC, of Herndon, Virginia, protests the issuance of a task order to American Systems Corporation (ASC), of Chantilly, Virginia, under request for proposals (RFP) No. 70B02C21R00000069, issued by the Department of Homeland Security (DHS), United States Customs and Border Protection (CBP), for independent verification and validation (IV&V) services. NTT, which is the incumbent contractor for the requirement, argues that the agency's evaluation of proposals and source selection decision were unreasonable.

The protest is denied in part, and dismissed in part.

DISCUSSION

Using the procedures of Federal Acquisition Regulation (FAR) subpart 16.5, the agency issued the solicitation on May 5, 2021, to vendors holding contracts under the General Services Administration's Alliant 2 indefinite-delivery, indefinite-quantity governmentwide acquisition contract. Agency Report (AR), Tab 11, RFP at 4, 32.¹ The RFP seeks IV&V services for the systems engineering division of CBP's office of acquisition to verify and validate that all products and systems acquired for border control and security at and between United States ports of entry comply with CBP requirements and that program management is performed in an effective and efficient manner. AR, Tab 5, Statement of Work (SOW) at 1.

The solicitation anticipated issuance of a cost-plus-fixed-fee task order for a base year with four 12-month options. RFP at 5. Award was to be made on a best-value tradeoff basis considering the following evaluation factors, in descending order of importance: corporate experience, technical/management approach, small business utilization plan, and cost/price. *Id.* at 36-37, 44. The technical/management approach factor included three equally-weighted subtopics: prior team experience, management and staffing plan, and technical understanding. *Id.* at 41, 44. The three non-price factors, when combined, were more important than cost/price. *Id.* at 44. The solicitation also provided, however, that between proposals of substantially equal technical merit, cost/price will become a more significant factor. *Id.* It also advised that the contracting officer or source selection authority "has the right to determine whether two or more technical proposals are 'substantially equal'" or "whether any differences in technical weighing are 'significant' for purposes of evaluating the overall merits of proposals." *Id.*

The evaluation was to be conducted in two phases using an "advisory down-select" process. *Id.* at 41-42. In the first phase, proposals were to be evaluated under the first technical factor--corporate experience; following the phase one evaluation, the agency would issue an "advisory notification." *Id.* at 42. The most highly rated offerors would be advised to proceed to the second phase during which vendors would be evaluated under the other factors--technical/management approach, small business utilization plan, and cost/price. *Id.* The solicitation also provided that, for "a holistic evaluation," the rating determined for a vendor's proposal in phase one for the corporate experience factor would be considered as part of the phase two evaluation. *Id.* Vendors not among the most highly rated after the phase one evaluation, would be advised that they were unlikely to be viable competitors. *Id.* The intent of the notification was to minimize proposal development costs for vendors with little to no chance of receiving an award. *Id.*

Under the technical/management factor, the agency would evaluate the three subtopics holistically and assign each a risk rating of low, medium, or high risk, representing the agency's confidence that the offeror understands the requirement and will be successful in performing the work. RFP at 41.

¹ The solicitation was amended three times. Citations to the RFP are to the conformed copy through amendment 3. Contracting Officer's Statement (COS) at 1, 3.

With regard to cost/price, the RFP advised that, “[s]eparately and apart from the technical evaluation,” the government would conduct a “cost and/or price evaluation of the Offeror’s cost/price proposal.” *Id.* at 43. The RFP further advised that the agency would conduct a cost analysis to evaluate “the realism of the offeror’s proposed costs in terms of its proposed approach to determine the probable cost of performance.” *Id.*

To assist the agency in its cost/price evaluation, offerors were requested to furnish “a brief but comprehensive statement concerning the estimating procedures used in preparing the offer and to specifically include a description of the offeror’s established estimating procedures.” *Id.* Offerors were also required to provide “sufficient cost and pricing information to support negotiation of the contract types identified in the Solicitation” and to submit “cost or pricing data to include cost elements”--such as “direct labor, subcontracts, travel, [other direct costs] ODC, fringe, overhead, [general and administrative expenses] G&A, and fee, etc.”--along with “adequate supporting documentations.” *Id.*

The solicitation explained that the realistic cost would reflect the agency’s best estimate of the cost of any task order that is most likely to result from the offeror’s proposal and that the realistic cost would be used for “purposes of evaluation to determine the best value.” *Id.* Offerors were also advised that the realistic cost would be determined “by adjusting each offeror’s proposed cost, and fee when appropriate, to reflect any additions or reductions in cost elements to realistic levels based on the results of the cost realism analysis.” *Id.*

The CBP received proposals from three offerors by the solicitation closing date for receipt of proposals. COS at 2. After conducting the phase one evaluation, the agency notified two offerors, NTT and ASC, that they were among the most highly rated offerors and that they could participate in phase two of the procurement.² *Id.* Both NTT and ASC submitted their phase two proposals by the due date of June 11, 2021. *Id.* at 3.

The table below summarizes the ratings assigned to NTT’s and ASC’s proposals and the offerors’ proposed and evaluated costs/prices:

² The CBP notified the other offeror that it was unlikely to receive award and that the agency did not recommend that it proceed to phase two of the competition. COS at 2.

Factor/Subtopic	NTT	ASC
CORPORATE EXPERIENCE	High Confidence	High Confidence
TECHNICAL/MANAGEMENT APPROACH	High Confidence	High Confidence
Subtopic: Prior Team Experience	High Confidence	High Confidence
Subtopic: Technical Understanding	High Confidence	High Confidence
Subtopic: Management/Staffing Plan	Some Confidence	High Confidence
SMALL BUSINESS UTILIZATION PLAN	High Confidence	High Confidence
Proposed Cost/Price	\$144,521,315	\$129,873,561
EVALUATED COST/PRICE	\$150,701,815	\$134,013,305

AR, Tab 29, Source Selection Authority (SSA) Business Memorandum at 15, 16.

The agency assigned both NTT's and ASC's proposals a rating of high confidence for each of the three non-price factors. *Id.* at 15. Despite assigning the two proposals the same overall confidence rating for the technical/management approach factor, however, the technical evaluation team (TET) found that NTT's proposal presented risks not present in ASC's proposal under all three of the technical/management approach subtopics. AR, Tab 26, TET Consensus Report (NTT) at 2-5; COS at 6.

Under the prior team experience subtopic, the TET assigned NTT's proposal a rating of high confidence, but identified a "low risk" in the proposal because "[t]he claimed prior team experience is relevant to the current IV&V contract activities and not tied directly to the SOW requirements." AR, Tab 26, TET Consensus Evaluation at 3. The TET also identified a "medium risk" in NTT's proposal under the technical understanding subtopic based on the finding that the proposal "frames [NTT's] approach to IV&V according to their efforts on the current contract" but that "[m]ultiple IV&V Independence Models may be necessary to meet future IV&V requirements." The TET concluded that the proposal's "lack of consideration of other models is concerning, particularly for an I&V vendor." *Id.* at 6. Even though the evaluators found a "medium risk," the TET still assigned an overall rating of high confidence to NTT's proposal under this subtopic. *Id.*

Finally, the TET identified the following four risks in NTT's proposal under the management/staffing plan subtopic:

- There is a lack of clarity regarding the scope and role of large and small businesses in meeting future requirements (low risk).
- The role, qualifications, and IV&V experience of the proposed project manager is unclear. This lack of clarity and experience creates some management concerns and, by extension, contract success (medium risk).

- The company leadership support for NTT Data is unclear from the details provided in the proposal. It is unclear with whom contract or performance issues would be deferred to or resolved with (medium risk).
- It is unclear why NTT Data will recruit new talent immediately if 98% of the claimed team is returning. There is also no discussion on how the [DELETED] new sub-contractors will be used for the performance of the contract. The risk concern is whether or not the offeror will actually have 98% of the team return shortly after an award is made, therefore impacting the timeline for a potential contract transition (low risk).

Id. at 5. Based on the identification of these risks, the TET assessed a rating of “some confidence” to NTT’s proposal for the management/staffing plan subtopic.

The source selection authority (SSA) conducted a best-value tradeoff analysis between the proposals and found that while both proposals “provided the Government evaluators with High Confidence for all non-cost factors,” the TET had identified several risks in NTT’s technical proposal that were not present in ASC’s proposal, which “slightly separate[ed] the quality of the two proposal submissions.” AR, Tab 29, SSA Business Memorandum at 20. The SSA explained that “[o]verall, ASC had the highest technically rated proposal of the two (2) companies,” with the “distinguishing differences” found under the technical/management factor. *Id.* The SSA also noted that “ASC’s proposal is the lowest cost proposal” and its “total evaluated cost is about 10% less than” NTT’s proposal. *Id.* The SSA concluded that “[g]iven that ASC has submitted a technically superior proposal” with the lowest proposed costs, “ASC offers the best value to the Government.” *Id.*

On September 24, 2021, the agency notified NTT that its proposal had not been selected. AR, Tab 32, Unsuccessful Offeror Notice at 1. After requesting and receiving a debriefing, NTT timely filed this protest with our Office.³

DISCUSSION

NTT raises a multitude of challenges to the CBP’s evaluation and resulting award decision. The protester first contends the agency failed to properly evaluate ASC’s proposal under the corporate experience factor. Next, NTT alleges that the agency waived a material requirement of the solicitation by not requiring proof of firm commitments from ASC’s entire team under the technical/management factor. The protester further argues that the evaluation of risks to NTT’s proposal under the technical/management factor was unreasonable, and that the cost realism evaluation was unreasonable. Finally, the protester claims the CBP conducted a flawed best-value

³ The awarded value of the task order at issue here is \$117,645,505, and, accordingly, this protest is within our jurisdiction to hear protests of task orders placed under civilian agency indefinite-delivery, indefinite-quantity contracts valued in excess of \$10 million. 41 U.S.C. § 4106(f)(2); AR, Tab 32, Unsuccessful Offeror Notice at 1.

tradeoff determination. For the reasons discussed below, we dismiss the first argument, concerning the corporate experience evaluation, for failing to state a valid basis of protest. We deny the remaining allegations.⁴

Technical Evaluation

Corporate Experience Evaluation of ASC

NTT argues that because an offeror's corporate experience confidence rating was to be based on the corporate experience of the prime contractor, and ASC "itself lacks the experience and resources to perform a majority of the required work or to staff a majority of key positions," it was unreasonable for the agency to have assigned ASC a rating of "high confidence" under the corporate experience factor. Comments & 2nd Supp. Protest at 2. The protester alleges that ASC's "high confidence" rating under the corporate experience factor was improper because ASC's proposed staffing plan showed that ASC is "dependent on its subcontractors to perform the majority of the work called for under the Contract"; and "it was unreasonable for the Agency to have credited ASC for [its own] experience given its proposed role in the actual performance and management of the work." *Id.* at 3, 5.

As relevant to the protester's argument, the solicitation provided that the agency would "assess its level of confidence that the [o]fferor will successfully perform all requirements based on an assessment of *relevant corporate experience from the contractor.*"⁵ RFP at 40 (emphasis added). The agency and intervenor both request dismissal of the protest ground, arguing that the solicitation did not provide for an assessment of the feasibility of the offeror's proposed staffing plan under the corporate experience factor. We agree.

⁴ Although we do not specifically address all of NTT's arguments, we have fully considered all of them and find that none provides a basis on which to sustain the protest.

⁵ Specifically, the RFP instructed offerors to address five elements for the corporate experience factor: (1) the company's experience with performing IV&V in accordance with the Institute of Electrical and Electronics Engineers (IEEE) Standard 1012-2016 (keeping in mind that testing is only an optional requirement in the SOW, which was not exercised in the past); (2) whether the company's prior experience involved the identification of inadequate testing by the developer or government, and if so, a description of the company's response; (3) the company's experience performing IV&V analysis on projects similar in size and complexity, whether at DHS, Department of Defense, State, Local, or private industry; (4) the company's experience providing support as both the IV&V agent for a client and being integrated with the program being reviewed (including a description of experience maintaining appropriate relationships while ensuring successful outcomes for the customer); and (5) a description of the company's experience with transition-in for IV&V services that involved difficulties and the steps taken in response. RFP at 36.

The jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act of 1934, 31 U.S.C. §§ 3551-3557. Our role in resolving bid protests is to ensure that the statutory requirements for full and open competition are met. *Cybermedia Techs., Inc.*, B-405511.3, Sept. 22, 2011, 2011 CPD ¶ 180 at 2. To achieve this end, 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). 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. *Midwest Tube Fabricators, Inc.*, B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3.

We conclude that NTT's argument does not establish a valid basis of protest. Although the protester alleges that the agency should have considered ASC's proposed staffing levels and staffing plan in evaluating its proposal under the corporate experience factor, the agency evaluated corporate experience and assigned a rating of "high confidence" during phase one of the competition, at which time the agency did not have ASC's proposed staffing or staffing plans as they were to be evaluated during phase two. While the protester points to language in the solicitation--calling for a "holistic evaluation" and providing that the "rating determined in Phase I" for the corporate experience factor would "move forward" as part of the overall evaluation for phase two--this language indicates neither that the corporate experience factor would be reevaluated during the phase two evaluation, nor that the agency's confidence rating for the corporate experience factor would be based, in part, on an assessment of the feasibility of the proposed staffing plan submitted by an offeror for evaluation under the technical/management factor. Because the protester's allegations rely upon assumptions and characterizations concerning the RFP that are not supported by those documents, we dismiss this argument as failing to state a valid basis of protest. 4 C.F.R. §§ 21.1(c)(4) and (f).

Technical/Management Factor Evaluation of ASC

The protester argues that the agency relaxed a material solicitation requirement by not requiring proof of firm commitments from ASC's proposed subcontractor personnel. NTT contends that the solicitation required "individual employees proposed on the task order into 2026 to be identified by name" and that this requirement is consistent with the solicitation's "express requirement" that offerors submit "letter(s) of commitment for the members of their proposed team." RFP at 11; Supp. Comments at 3-4. The protester alleges that the agency ignored that numerous personnel in ASC's proposal were identified as to-be-determined (TBD)--meaning that the individuals were not identified by name--and thus lacked the required letters of commitment. *Id.*

The agency disagrees with the protester and contends that it "did not relax the requirement to provide letters of commitment" because "such a requirement did not--and could not--apply to all of the personnel individually." 2nd Req. for Dismissal at 7. The agency maintains that "nothing in the [s]olicitation require[d] the individual employees proposed on the task order into 2026 to be identified by name." *Id.* The

agency also contends that, while the solicitation directed offerors to “provide resumes, proof of employment or letter(s) of commitment, and any relevant certification documentation for the personnel proposed for the SOW requirements,” the RFP also specified that this documentation must be included in the offeror’s technical/management approach volume (*i.e.*, volume I), which was limited to 60 pages. RFP at 37 (“There is a 60 page limit for Volume I submissions”); *id.* at 38 (stating that “[o]fferors shall address . . .with their Volume I submission” six identified topics, including to “[p]rovide the resumes proof of employment or letter(s) of commitment, and any relevant certification documentation for the personnel proposed for the SOW requirements.”).

Additionally, the agency points to questions and answers (Q&As), incorporated into the RFP via amendment 2, which the agency asserts further clarified this requirement. For example, in response to a question noting that the requirement to include resumes and letters of commitment in the technical proposal “can result in an indeterminate number of additional pages” and asking if such information could be exempt from the 60-page limitation for the technical/management volume, the CBP advised that the “Phase II, Volume 1, Factor 2--Technical/Management Approach, shall not exceed 60 pages.” AR, Tab 9, RFP amend. 0002 at 3.

Where 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. *Alluviam LLC*, B-297280, Dec. 15, 2005, 2005 CPD ¶ 223 at 2.

In our view, the solicitation language, read as a whole, including the agency’s questions and answers, supports the agency’s interpretation and fails to support NTT’s interpretation. The solicitation did not include any language specifying that offerors must identify a named individual for all personnel positions proposed. Instead, the RFP required that offerors provide resumes and letters of commitment for the “personnel proposed” in their technical/management approach volume, which was limited to 60 pages. RFP at 36-37. The solicitation’s Q&As clarified that the resumes and letters of commitment for proposed personnel must fit within the 60-page technical/management volume. AR, Tab 9, RFP amend. 0002 at 3. The record reflects that both NTT and ASC proposed more than 100 personnel positions per year. AR, Tab 17, NTT Technical/ Management Volume at 27; AR, Tab 36, ASC Cost Volume Spreadsheet, Cost Summary Buildup tab. To interpret the solicitation as requiring offerors to submit resumes and letters of commitment for all of the 100 proposed positions, while also addressing the required topics, within the 60 pages is not a reasonable reading of this requirement.⁶ Indeed, the record reflects that neither the awardee’s nor NTT’s

⁶ To the extent NTT believed, based on its reading of the solicitation, that offerors must identify named individuals for all proposed personnel positions, and submit letters of commitment for all proposed individuals, such an interpretation clearly conflicted with the information provided by the agency in the questions and answers. Any ambiguity regarding these provisions was patent, *i.e.*, clear or obvious on the face of the RFP,

proposal complied with the protester's interpretation of the requirement. For example, the record reflects that NTT's technical/management volume did not provide letters of commitment for all of its proposed personnel positions. AR, Tab 17, NTT Technical/Management Volume at 17, 27.

Based on our conclusion that the agency's interpretation of the solicitation--that offerors were not required to provide firm commitments for all proposed positions--is the only reasonable interpretation of the RFP, we find that ASC's proposal did not fail to comply with a material solicitation requirement, as the protester asserts. In any event, even assuming the agency erred and improperly waived a material solicitation requirement in finding ASC's proposal acceptable under the technical/management approach factor, we conclude that the protester's claim also fails due to a lack of prejudice. Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was competitively prejudiced by the agency's actions; that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. *McDonald-Bradley*, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see *Statistica, Inc. v. Christopher*, 102 F.3d 1577, 1581 (Fed. Cir. 1996). Even in circumstances where the agency was unreasonable in accepting the awardee's proposal, a protester must still show that it was competitively prejudiced by a waiver of solicitation requirements in favor of the awardee. *Orbital Scis. Corp.*, B-414603, B-414603.2, July 26, 2017, 2017 CPD ¶ 249 at 6. To demonstrate prejudice from the waiver or relaxation of solicitation requirements, a protester must show that it would have altered its proposal to its competitive advantage, or that the agency did not apply a similar waiver to the protester's proposal. *Id.*

Here, NTT contends that it was prejudiced because "the agency did not apply a similar waiver of the team member firm commitment requirement when reviewing [NTT's] proposal." Supp. Comments at 6. The protester's assertion, however, is not supported by the record. As noted above, the record reflects that NTT's proposal did not provide commitment letters for all of its proposed personnel positions. See AR, Tab 17, NTT Technical/Management Volume at 17 (stating that [DELETED] personnel named in NTT's proposal, out of the approximately 100 personnel positions proposed, "have signed letters committing to remain exclusive to Team NTT Data for this proposal"). In evaluating NTT's proposal, the TET noted that "[a]ccording to NTT DATA, approximately 98% of the current team is exclusively committed to the follow-on IV&V contract" but "only [DELETED] of the 100+ current contractors are said to be committed in the proposal."). AR, Tab 26, NTT TET Consensus Report at 3.

Contrary to the protester's position, the record reflects that the agency's noted concern stemmed from an identified inconsistency in NTT's proposal. Specifically, the agency pointed to NTT's statement that 98 percent of the incumbent staff was committed to the follow-on contract and the statement that [DELETED] (out of approximately 100

rather than latent, and as such, a protest on this ground was required to be filed prior to the submission of proposals. 4 C.F.R. § 21.2(a)(1); *U.S. Facilities, Inc.*, B-293029, B-293029.2, Jan. 16, 2004, 2004 CPD ¶ 17 at 10. The protester's failure to do so renders such an argument untimely now.

proposed personnel positions) had signed letters of commitment. This concern does not establish that the agency required offerors to submit proof of a firm commitment from all proposed personnel. As such, the protester's attempt to demonstrate waiver of a requirement that does not exist, does not demonstrate prejudicial error. Accordingly, this protest ground is denied.

Technical/Management Factor Evaluation of NTT

NTT also challenges the agency's evaluation of its proposal under the technical/management factor, arguing that the agency's assessment of various risks to NTT's proposal under the factor was unreasonable. We have reviewed all of the protester's allegations and find that none provides a basis to sustain the protest. We discuss two of the findings of medium risk below.

The evaluation of proposals in a task order competition, including the determination of the relative merits of proposals, is primarily a matter within the agency's discretion. *Logistics Mgmt. Inst., B-417601 et al.*, Aug. 30, 2019, 2019 CPD ¶ 311 at 4; *Sevatec, Inc.*, B-416617, B-416617.2, Nov. 1, 2018, 2018 CPD ¶ 379 at 6. In reviewing protests challenging an agency's evaluation of task order proposals, our Office does not reevaluate proposals or substitute our judgment for that of the agency, but examines the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. *Logistics Mgmt. Inst., supra*; *OGSystems, LLC*, B-417026.5, B-417026.6, July 16, 2019, 2019 CPD ¶ 273 at 5.

As previously noted, the TET identified four risks in NTT's proposal under the management/staffing plan subtopic, including two designated as "low risk" and two designated as "medium risk." AR, Tab 26, TET Consensus Report (NTT) at 5. The two concerns identified as "medium risk" included: a lack of clarity concerning the role, qualifications, and IV&V experience of the proposed project manager; and a lack of clarity regarding company leadership support for NTT, including "with whom contract or performance issues would be deferred to or resolved with." *Id.* Based on the identification of all four risks, the TET assessed a rating of "some confidence" to NTT's proposal for the management/staffing plan subtopic. *Id.* at 2.

With regard to the first concern identified as "medium risk," the TET found that "[t]he role, qualifications, and IV&V experience of the proposed project manager is unclear" and that "[t]his lack of clarity and experience creates some management concerns and, by extension, contract success." *Id.* at 5. In response to the protest, the TET team lead further explains that, although NTT's proposal "makes reference [to] past successes in performing the contract taskings," the TET was unclear about the proposed manager's involvement in those successes given his relatively short tenure on the IV&V team. AR, Tab, 3, TET Team Lead Statement at 3; MOL at 23.

The protester disagrees with the agency's assessment of the risk and argues that NTT's proposal "clearly explained the qualifications of its proposed [project manager]." In

support of this assertion, the protester points to information in its proposal that it contends contradicts the agency's finding. Protest at 23; see also AR, Tab 17, NTT Data Technical/Management Proposal at 9-11. For example, the protester cites to a table on page 4 of its proposal identifying with an "x" the proposed key personnel aligned to the SOW requirements. For the project manager, the table indicated, without any elaboration or explanation, that the project manager's expertise aligned with seven of the SOW requirements.⁷ Protest at 23; AR, Tab 17, NTT Technical/Management Proposal at 4. The protester also points to the project manager's resume in its proposal, which the protester contends, "highlighted [the project manager's] experience with IV&V on the incumbent contract, where he serves as the Senior Director." *Id.* at 5.

The agency responds that the TET's concern involved "lack of clarity related to [the proposed manager's] role and involvement in certain of the successes otherwise referenced in its proposal." MOL at 23. As an example, the agency notes that NTT's proposal stated that "[u]nder [the proposed project manager's] effective and efficient leadership, Team NTT DATA has continued to deliver a strong record in successfully managing this large, complex program over *the past decade.*" AR Tab 17, NTT Technical/Management Proposal at 25 (emphasis added). The agency maintains that this sentence "appears to overstate [the project manager's] involvement given that he has only led the incumbent task order for three years." MOL at 23.

Based on this record, we find nothing unreasonable regarding the agency's identification of a medium risk based on its concern regarding a lack of clarity in NTT's proposal related to the proposed project manager's role and involvement in certain of the successes otherwise referenced in the proposal. As we have recognized, it is an offeror's obligation to submit an adequately-written proposal for the agency to evaluate. See *Undercover Training, LLC*, B-418170, Jan. 9, 2020, 2020 CPD ¶ 25 at 4-5. To the extent the protester disagrees with the agency's evaluation, such disagreement, without more, fails to establish that the evaluation was unreasonable. *DEI Consulting*, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2.

With regard to the other "medium risk" identified in NTT's proposal under this subfactor, the TET found that "[t]he company leadership support for NTT Data is unclear from the details provided in the proposal" and that it is "unclear with whom contract or performance issues would be deferred to or resolved with." AR, Tab 26, TET Consensus Report (NTT) at 5. The protester argues that the agency's assessment of this medium risk was unreasonable because the solicitation did not require offerors to provide any description of an offeror's company leadership support; rather, the solicitation required only that offerors "demonstrate their ability to manage all aspects of

⁷ Specifically, identified SOW requirements included: the general requirements (SOW 5.1), IV&V Management (SOW 5.2), program reviews (SOW 5.3.1), security standards (SOW 5.3.2), software measures (SOW 5.3.3), IV&V testing support (SOW 5.4), and systems engineering (SOW 5.5). AR, Tab 17, NTT Technical/Management Proposal at 4.

the contract” through a discussion of six topics.⁸ Protest at 24 (quoting RFP at 37). Agencies are required to evaluate proposals based solely on the factors identified in the solicitation. *Information Int’l Assocs, Inc.*, B-416826.2 *et al.*, May 28, 2019, 2019 CPD ¶ 200 at 4. While agencies properly may apply evaluation considerations not expressly identified in the solicitation, those considerations must be reasonably and logically encompassed by the stated evaluation criteria; there must be a clear nexus between the stated criteria and unstated considerations. *Id.*

Here, we agree with the protester that the evaluation of company leadership was not logically encompassed within the stated evaluation criteria of this subtopic. Nonetheless, we do not sustain this protest argument given that the record fails to demonstrate that the protester--whose proposal was also assessed the above-discussed medium risk and two low risks under the management/staffing plan subtopic--suffered competitive prejudice as a result of the error.

Cost Evaluation of ASC

NTT raises various challenges to the CBP’s cost realism analysis of ASC’s proposal. For example, the protester argues that, by accepting NTT’s representation about the company’s analysis of its proposed subcontractor costs, the cost evaluation team (CET) “unreasonably delegated part of its realism analysis to ASC, while holding NTT Data to a higher standard.” Comments & 2nd Supp. Protest at 14. The protester also contends that the cost realism analysis failed to evaluate the impact and risk of ASC’s proposed use of uncompensated overtime. *Id.* at 13-23. As discussed below, we find no merit to NTT’s challenges to the agency’s cost realism evaluation.

The protester first argues that the cost realism analysis of ASC’s proposed subcontractor costs was unreasonable because “there is no evidence in the Agency Report that CBP performed any independent cost realism analysis of ASC’s subcontractor labor[.]” *Id.* at 15. The protester alleges that, instead of conducting an independent analysis, as required by the RFP, the agency “unreasonably relied on ASC’s assertions that it conducted a price analysis for its subcontractors.” *Id.* at 14.

The RFP established that the agency would evaluate, among other things, the realism of offerors’ proposed costs. RFP at 43. Additionally, specific to subcontractors, the solicitation provided that the offeror shall specify “the relationship between Prime and Subcontractors in regard to the type of contract being awarded to Subcontractors (*i.e.* Time and Material (T&M), Cost Reimbursement or Labor Hour) for which the total

⁸ Specifically, the six topics included: (1) staffing management and plan; (2) how the offeror will determine the nature and scale of skills required for the IV&V and systems engineering support SOW areas; (3) allocation management of skilled personnel, (4) outline how subcontractors, specifically small businesses, will be incorporated into the team; (5) ability to provide personnel who have a CBP background investigation; and (6) provide the resumes, proof of employment or letter(s) of commitment, and any relevant certification documentation for the personnel proposed).

value of the subcontract is greater than \$750,000.” *Id.* at 38. The solicitation did not require the submission of individual cost elements for subcontractors, but did request that offerors furnish “a brief but comprehensive statement concerning the estimating procedures used in preparing the offer and to specifically include a description of the offeror’s established estimating procedures.” *Id.* at 43.

The agency argues that the CET conducted “its own review of the cost proposal,” which included detailed information establishing the realism of the subcontractor labor rates, and found the subcontractor labor rates to be “credible” and “realistic.” Supp. MOL at 12-15. The agency maintains that, rather than “delegate” its review of subcontractor rates to ASC, the CET report “simply noted that ASC had conducted a realism review of the subcontracting costs] prior to submitting its proposal” and that the CET “accepted” ASC’s conclusions after performing its own review of the cost proposal. Supp. MOL at 13; AR, Tab 27, Cost Summary Report at 39-41; Tab 43, CET Team Lead Statement at 1-2.

When an agency evaluates a proposal for the award of a cost-reimbursement contract or task order, the 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. Federal Acquisition Regulation (FAR) 15.404-1(d), 16.505(b)(3); see *CSI, Inc.; Visual Awareness Techs. & Consulting, Inc.*, B-407332.5 *et al.*, Jan. 12, 2015, 2015 CPD ¶ 35 at 5-6. Consequently, the agency must perform a cost realism analysis to determine the extent to which the offeror’s proposed costs are realistic for the work to be performed. FAR 15.404-1(d)(1); see *Noridian Admin. Servs., LLC*, B-401068.13, Jan. 16, 2013, 2013 CPD ¶ 52 at 4. An agency, however, is not required to conduct an in-depth cost analysis, or to verify each and every item in assessing cost realism; rather, the evaluation requires the exercise of informed judgment by the contracting agency. See *Cascade Gen., Inc.*, B-283872, Jan. 18, 2000, 2000 CPD ¶ 14 at 8; see FAR 15.404–1(c). Our review of an agency’s cost realism evaluation is limited to determining whether the cost analysis is reasonable; a protester’s disagreement with the agency’s judgment, without more, does not provide a basis to sustain the protest. See *TriCenturion, Inc.; SafeGuard Servs., LLC*, B-406032 *et al.*, Jan. 25, 2012, 2012 CPD ¶ 52 at 6.

Here, we find nothing unreasonable regarding the agency’s evaluation of ASC’s proposed subcontractor costs. The record reflects that ASC’s proposal included detailed information regarding subcontractor pricing and labor rates. In appendix A of ASC’s cost volume, ASC provided the pricing of its proposed subcontractors. AR, Tab 35, ASC Cost Volume at 9. ASC’s proposal explained that the subcontractor pricing was provided to “demonstrate the cost realism of [its] proposed price” and that ASC’s proposed cost “[DELETED][.]” *Id.*

ASC’s proposal also included the results of a price analysis that ASC conducted of its proposed subcontractor’s labor rates. *Id.* at 11-13. The proposal noted that [DELETED] to “demonstrate that their proposed rates were determined to be fair and reasonable.” *Id.* at 9-10. The proposal also explained that the analysis was performed on [DELETED] labor rates for all labor categories proposed. *Id.* at 12. To determine whether the subcontractor’s final labor rates were fair, reasonable, and realistic, ASC

compared [DELETED].” *Id.* In particular, [DELETED].” *Id.* ASC’s analysis concluded that the subcontractor rates were reasonable and realistic. *Id.*

In conducting the cost realism analysis of ASC’s subcontractor costs, the CET stated, under the heading “Cost Realism Analysis – Subcontractors,” that in analyzing the realism of the subcontractors’ proposed labor costs, the CET “reviewed the Prime’s cost proposal, [and] examined their cost models/templates for miscalculations and inconsistencies.”⁹ AR, Tab 27, Cost Summary Report at 39. The CET noted that it “received an email from the TET dated June 29, 2021, confirming that the TET took no exceptions to the labor mix and number of personnel proposed for each labor category.” *Id.* at 30. The CET also “compared proposed labor rates that were not actuals to the applicable rates in several salary surveys and found all rates to be within a reasonable range.” *Id.* In addition, the CET “compared the proposed labor rates to the Prime’s Alliant 2 contract rates (fully burdened) and noted that in most cost cases [DELETED].” *Id.*

The record reflects that in analyzing the realism of subcontractors’ proposed costs, the CET reviewed the Prime’s cost proposal, examined the proposal’s cost models/templates for miscalculations and inconsistencies, compared proposed subcontractor rates to the Prime’s Alliant II ceiling rates to determine reasonableness or realism, and made adjustments to the subcontractors’ proposed rates, hours, labor mix, and number of personnel when appropriate based on its analyses and recommendations from the TET; the TET took no exception to the subcontractor labor hour or labor mix. Ultimately, the CET concluded that “[t]his estimate did not require any adjustments except for the escalation factor.” *Id.* at 29. In this regard, the CET determined that the subcontractors’ proposed escalation factor of [DELETED]% should be adjusted to 3.4% “to be closely in line with the Bureau of Labor Statistics.”¹⁰ *Id.* at 30.

⁹ The protester complains that this section of the CET report refers to cost “reasonableness” instead of realism. Comments & 2nd Supp. Protest at 14-15. As the CET team lead explains, however, the CET Report contains a typographical error, AR, Tab 43, CET Team Lead Statement at 1-2, and the context of the excerpt about which NTT Data complains--which is included in the “Cost Realism” section, under the “Cost Realism Analysis – Subcontractors” subsection--fully supports this explanation. AR, Tab 27, Cost Summary Report at 39. Accordingly, we find that this aspect of NTT’s protest provides no basis to sustain the protest.

¹⁰ The protester also argues that the agency unreasonably and unequally adjusted both offerors’ proposed escalation factors to 3.4 percent. The CET determined that NTT’s proposal failed to adequately justify its proposed escalation rate of [DELETED] percent, and that ASC’s proposal failed to adequately justify its proposed escalation rate of [DELETED] percent. AR, Tab 27, Cost Summary Report at 50. The CET explained that both offerors’ escalation rates were lower than the escalation rate recommended by the Bureau of Labor Statistics and therefore adjusted the escalation rate of both offerors “to be more in line with the Bureau of Labor Statistics.” *Id.* Although NTT asserts that the single sentence in its proposal--stating that its proposed escalation “is consistent with labor market projections and similar DHS, CBP and Federal contracts”--provided

As previously referenced, an agency's analysis need not achieve scientific certainty; rather, the methodology employed must be reasonably adequate and provide some measure of confidence that the agency's conclusions about the most probable costs for an offeror's proposal are reasonable and realistic in view of other cost information reasonably available to the agency at the time of its evaluation. *Tatitlek Techs., Inc.*, B-416711 *et al.*, Nov. 28, 2018, 2018 CPD ¶ 410 at 14. Here, based on the record and our review of the agency's cost realism assessment, including its consideration of ASC's subcontractor costs, we do not question the reasonableness of the agency's conclusion that the subcontractor costs were realistic. NTT's protest challenging the agency's evaluation in this regard is denied.

The protester next argues that the agency did not conduct a proper evaluation of ASC's proposed use of uncompensated overtime because it failed to assess the realism and risk of ASC's use of uncompensated overtime. 2nd Supp. Protest at 20-21.

In support of its argument, the protester points to FAR provision 52.237-10, Identification of Uncompensated Overtime and FAR section 37.115-2, Uncompensated Overtime. The FAR provision states that whenever there is uncompensated overtime, the adjusted hourly rate (including uncompensated overtime), rather than the hourly rate, shall be applied to all proposed hours, whether regular or overtime hours.¹¹ FAR provision 52.237-10(b)(1); *see also* FAR section 37.115-2 (d) ("Whenever there is uncompensated overtime, the adjusted hourly rate (including uncompensated overtime) . . . rather than the hourly rate, shall be applied to all proposed hours, whether regular or overtime hours."). The provision also states that proposals that include unrealistically low labor rates, or that do not otherwise demonstrate cost realism, will be considered in a risk assessment and evaluated for award in accordance with that assessment. FAR provision 52.237-10(d); *see also* FAR section 37.115-2(c) (stating that contracting officers "must ensure that the use of uncompensated overtime in contracts to acquire services on the basis of the number of hours provided will not degrade the level of technical expertise required to fulfill the Government's requirements.").

The record reflects that the CET recognized during its cost realism evaluation that ASC proposed to use uncompensated overtime (UCOT) in connection with its direct labor, stating: "[ASC] operates under a [DELETED], and has included a UCOT factor in the proposal at the rate consistent with [its] corporate historical information." AR. Tab 27, Cost Summary Report at 29. The CET further explained that "[t]he factor of

sufficient justification for its escalation rate, we find nothing unreasonable regarding the agency's decision to adjust the escalation factor for both proposals. To the extent NTT contends that its proposal was sufficient or should have been interpreted differently, the protester's disagreement with the agency's evaluation, without more, does not render the evaluation unreasonable or otherwise provide a basis to sustain the protest. This protest ground is denied. *DEI Consulting, supra*.

¹¹ The adjusted hourly rate (including uncompensated overtime) is the rate that results from multiplying the hourly rate for a 40-hour work week by 40, and then dividing by the total proposed hours per week (which includes uncompensated overtime hours) over and above the standard 40-hour work week. *Id.* provision 52.237-10(a).

[DELETED]% applied to [ASC's] direct labor rates is consistent with [ASC's] three (3) years of most recent historical data" and that, for this task order, ASC "escalates labor at [DELETED]% per year." *Id.* Additionally, in response to the protest the CET team lead explains that the CET used ASC's "proposed labor rates (which included the UCOT factor of [DELETED]%)" during its "comparison to salary surveys and to Alliant II ceiling rates" and that "[t]hose proposed labor rates times applicable labor hours tied into the direct labor dollars." AR, Tab 43, CET Team Lead Statement at 2-3. Based on this analysis, the CET found the proposed rates were realistic. AR, Tab 27, Cost Summary Report at 20; Supp. MOL at 17-19. On this record, we find nothing unreasonable regarding the agency's evaluation.

In sum, the record shows that the agency's cost realism analysis looked at ASC's rates adjusted for its proposed uncompensated overtime as required by the FAR. AR, Tab 27, Cost Summary Report at 20; AR Tab 43, CET Team Lead Statement at 2; see *also* FAR 37.115-(d) (requiring that "adjusted hourly rate . . . rather than the hourly rate, shall be applied to all proposed hours, whether regular or overtime hours"). In any event, to the extent the protester argues that ASC's "use of uncompensated overtime effectively allowed it to further underbid its direct labor by an additional [DELETED] percent," Comments & 2nd Supp. Protest at 21, the argument is unavailing. Even if true, as the agency and intervenor assert, correcting this matter would result in an upward adjustment to address ASC's uncompensated overtime of [DELETED] percent, which would increase ASC's total evaluated cost by \$[DELETED].¹² AR, Tab 36, ASC Cost Proposal, Excel Spreadsheet tab "Cost Element Summary Work Breakdown Structure (WBS)," Cell H-59; Intervenor Supp. Comments at 19; see Agency 2nd Req. for Dismissal at 11. Because the agency found that ASC's total evaluated cost was approximately \$15 million (or 10 percent) lower than NTT's total evaluated cost, we find that any cost evaluation errors regarding ASC's use of uncompensated overtime would be too minimal to overcome the substantial price differential or otherwise alter the offerors' relative cost standing to the prejudice of the protester.¹³ On this record, we find no basis to sustain the protest.

¹² ASC's proposed cost for direct labor over the life of the contract is \$20,077,459. AR, Tab 36, ASC Cost Proposal, Excel Spreadsheet tab "Cost Element Summary WBS," Cell H-59. As noted by the intervenor, [DELETED] percent of \$[DELETED] is \$[DELETED]. Intervenor Supp. Comments at 19.

¹³ For the same reason, we find the protester has failed to demonstrate competitive prejudice with regard to its argument that the cost realism evaluation failed to analyze ASC's alleged strategy of underbidding the number of labor hours identified in the solicitation as "historic information." Comments & 2nd Supp. Protest at 16-17. As an initial matter, the protester asserts that, because the proposal included the historical

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Finally, NTT argues that the agency's tradeoff analysis was flawed because it was based on miscalculation of offerors' proposals on the technical and cost factors. As an initial matter, this allegation is derivative of NTT'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.

Additionally, to the extent the protester contends that the SSA unreasonably concluded that NTT's proposal represented the best value, we find reasonable the decision authority's determination that ASC had the highest-technically rated proposal. AR, Tab 29, SSA Business Memorandum at 20. Even though both proposals received ratings of high confidence for all non-cost factors, the decision authority found that "[o]verall, ASC had the highest technically rated proposal of the two (2) companies," with the "distinguishing differences" found in the technical/management factor elements. *Id.* (noting areas where NTT's proposal presented risks related to all three subtopics under the technical/management factor, which were not present in ASC's proposal). As

labor hours for the requirement, offerors were "expected to understand that the labor hours were fixed for proposal evaluation purposes," and that the CBP improperly "relaxed this requirement for ASC." *Id.* We, however, find no merit to this argument.

The protester fails to point to any provision in the solicitation indicating that the historical labor hours provided in the solicitation were fixed; rather, the RFP instructed offerors to propose to perform in an "effective and efficient manner." RFP at 38. Additionally, to the extent the protester asserts that the cost realism analysis failed to examine the impact of ASC's "underbidding," and questions whether this reduction in hours was realistic for the work to be performed, we disagree. As mentioned previously, the record reflects that the CET communicated with the TET regarding the realism of the proposed labor hours for ASC's proposed technical approach. See AR, Tab 41, CET Email at 2-4 (stating that the CET "need[ed] to have the Technical Team review and provide feedback in reference to the proposed hours being able to meet the RFP, or are adjustments required."). In particular, the CET requested that the contracting officer "provide this information on labor hours to [the] TET as part of our cost realism analysis that requires a cost/technical cross walk to ensure that the labor categories and labor hours are consistent with both cost proposal and technical proposal." *Id.* It also requested that "[i]f [the] TET requires any labor category and/or labor hour adjustments (for both non-program support and program support requirements), please provide those technical adjustments to CET to develop our Most Probable Costs." *Id.* The TET responded that, based on its review, no adjustments were necessary. *Id.* Contrary to the protester's assertion, the record reflects that the CET examined ASC's proposed labor hours and concluded that they were realistic for the proposed work. We further conclude that, even assuming any alleged error, the protester cannot establish competitive prejudice because ASC's evaluated cost would still be \$5 million less than NTT's if the agency upwardly adjusted ASC's labor hours to match the "historic information" in the RFP.

we have recognized, where, as here, the highest technically rated, lowest-cost proposal is selected for award, a cost/technical tradeoff is not required. *Id.*; *Epsilon Sys. Sols., Inc.*, B-414410, B-414410.2, Jun. 6, 2017, 2017 CPD ¶ 199 at 13-14.

The protest is denied in part and dismissed in part.

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