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Decision

Matter of: AMTIS-Advantage, LLC

File: B-411623; B-411623.2

Date: September 16, 2015

Pamela J. Mazza, Esq., Alexander O. Levine, Esq., Kathryn V. Flood, Esq., and Julia Di Vito, Esq., PilieroMazza PLLC, for the protester.
Terry L. Elling, Esq., Megan Mocho Jeschke, Esq., and Elizabeth N. Jochum, Esq., Holland & Knight LLP, for Brilliant Corporation, an intervenor.
Beth Sturgess, Esq., Mark A. Allen, Esq., Barbara L. Walthers, Esq., Eric Crane, Esq., and Joshua A. Kranzberg, Esq., Department of Homeland Security, for the agency.
Louis A. Chiarella, Esq., and Nora K. Adkins, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's technical evaluation is denied where the evaluation was reasonable, in accordance with the solicitation evaluation criteria, and equal.
 2. Protest challenging agency's evaluation of awardee's past performance is denied where the record shows that the evaluation was reasonable and consistent with the stated evaluation criteria.
 3. Protest challenging agency's evaluation of offerors' staffing is denied where the agency reasonably determined that the staffing proposed by both the protester and the awardee was adequate to perform the stated requirements.
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DECISION

AMTIS-Advantage, LLC (A-A), of Orlando, Florida, protests the award of a contract to Brilliant Corporation, of Reston, Virginia, under request for proposals (RFP) No. HSSCCG-14-R-0021, issued by the Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS), for records operations support services (ROSS). A-A argues that the agency's evaluation of offerors' proposals and resulting award decision were improper.

We deny the protest.

BACKGROUND

The RFP, issued on September 18, 2014, as an 8(a) small-business set-aside,¹ contemplated the award of a fixed-price contract for a base year with four 1-year options.² In general terms, the contractor was required to provide administrative and technical services in support of the USCIS records management function at the agency's National Records Center (NRC) in Lee's Summit, Missouri, and File Storage Facility (FSF), in Harrisonburg, Virginia.³ Performance Work Statement (PWS) §§ 2-3. The RFP established that contract award would be made on a best value basis, based on three evaluation factors in descending order of importance: technical capability, past performance, and price. RFP § V-1. The technical factor consisted of three subfactors, also in descending order of importance: management approach, technical approach, and corporate experience. Id. § V-2. The nonprice factors, when combined, were significantly more important than price. Id.

Nine offerors, including Brilliant and A-A, submitted proposals by the October 31 closing date. An agency technical evaluation committee (TEC) evaluated offerors' technical proposals using an adjectival rating scheme as follows: excellent, satisfactory, marginal, or unacceptable. A separate business evaluation committee (BEC) evaluated offerors' past performance as either low risk, medium risk, high risk, or neutral. Based on the initial evaluation of proposals, the agency established a competitive range which included Brilliant and A-A.

After the agency held discussions, eight offerors, including Brilliant and A-A, submitted final proposal revisions (FPR) by the January 26, 2015, closing date. By March 9, the agency completed its evaluation, with the final evaluation ratings and prices for the Brilliant and A-A proposals as follows:

¹ Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a), authorizes the Small Business Administration (SBA) to enter into contracts with government agencies and to arrange for performance through subcontracts with socially and economically disadvantaged small business concerns. Federal Acquisition Regulation (FAR) § 19.800(a). Pursuant to a partnership agreement, DHS has been delegated authority to enter into 8(a) direct awards on behalf of the SBA.

² The RFP was subsequently amended once. Unless specified otherwise, all references are to the final, conformed version of the solicitation.

³ The primary functions to be performed were correspondence operations, file operations, and the scanning of files and documents. PWS § 3.

	Brilliant	A-A
Technical Capability		
Management Approach	Excellent	Satisfactory
Technical Approach	Excellent	Satisfactory
Corporate Experience	Excellent	Excellent
Overall	Excellent	Satisfactory
Past Performance	Low Risk	Low Risk
Price	\$162,558,158	\$149,384,322

Agency Report (AR), Tab 40, TEC Report, at 5; Tab 28, BEC Report, at 3.

The agency evaluators also identified strengths and weaknesses in the offerors' proposals in support of the evaluation ratings assigned. For example, the TEC found two strengths and no weaknesses in A-A's "satisfactory" management approach, and five strengths and no weaknesses in Brilliant's "excellent" management approach. AR, Tab 40, TEC Report, at 11-20.

On April 24, the agency source selection authority (SSA) determined that Brilliant's proposal represented the best value to the government, and selected Brilliant for award. AR, Tab 32, Source Selection Decision, at 19-21. Specifically, the SSA found that the technical advantages of Brilliant's proposal outweighed the 8.7 percent price advantage associated with A-A's proposal.⁴ *Id.* at 20-21. After the agency provided A-A with notice of the contract award decision and a debriefing, this protest followed.

DISCUSSION

A-A raises numerous challenges to the agency's evaluation and resulting selection decision. Among other things, the protester alleges that: the evaluation of A-A's technical proposal was improper; the evaluation of Brilliant's past performance and corporate experience were unreasonable; and the agency's flawed staffing estimate resulted in an improper evaluation of offerors' staffing plans. A-A also argues that but for the various evaluation errors, its proposal would have represented the best value to the government. We have considered all of the protester's arguments and, although we address only the primary ones, find that none provide a basis on which to sustain the protest.

⁴ The SSA also performed similar price/technical tradeoffs between Brilliant and each other lower-priced offeror as part of her best value determination. *Id.* at 19-21.

Technical Evaluation of A-A

A-A protests that the agency's evaluation of its technical proposal was unequal and unreasonable. Specifically, A-A alleges that the features in Brilliant's proposal which the agency identified as strengths were also present in A-A's proposal. A-A contends that because it proposed very similar technical solutions to those proposed by Brilliant, it was improper for the agency not to identify similar strengths in its proposal.

In reviewing a protest challenging the agency's evaluation of proposals, our Office will not reevaluate proposals or substitute our judgment for that of the agency, as the evaluation of proposals is generally a matter within the agency's discretion. Del-Jen Educ. & Training Group/Fluor Fed. Solutions LLC, B-406897.3, May 28, 2014, 2014 CPD ¶ 166 at 8. Rather, our Office examines the record to determine whether the agency's judgment was reasonable and in accord with the evaluation factors set forth in the RFP, and whether the agency treated offerors equally in its evaluation and did not disparately evaluate proposals with respect to the same requirements. Marinette Marine Corp., B-400697 *et al.*, Jan. 12, 2009, 2009 CPD ¶ 16 at 11; Hanford Envtl. Health Found., B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 4. A protester's disagreement with the agency's judgment does not render the evaluation unreasonable. STG, Inc., B-405101.3 *et al.*, Jan. 12, 2012, 2012 CPD ¶ 48 at 7.

For example, A-A argues that several of the strengths assigned to Brilliant's proposal under the technical approach subfactor for concept of operations also should have been assigned to A-A's proposal. The solicitation required offerors to describe their concept of operations for file management, retirements, compaction, index scanning, non-index scanning, mailroom/warehouse, file operations, and redirect file management at the NRC and FSF locations; the PWS set forth the corresponding requirements and standards for each task. RFP § IV-5; PWS § 4.1-4.9. The TEC assessed strengths to Brilliant's concept of operations based on the following: [DELETED]; a strong focus to safeguard personally identifiable information (PII); and a substantial understanding of the NRC records management process. AR, Tab 40, TEC Report, at 17. In contrast, the TEC assigned a strength to A-A's concept of operations for its substantial understanding of FSF tasks.⁵ *Id.* at 12.

⁵ The TEC also assigned A-A's concept of operations a minor weakness for having a workflow chart that did not match the described process, thereby demonstrating a lack of attention to detail that may present risk to the government. *Id.* at 12. In its protest, A-A asserts that this weakness was unreasonable and reflected unequal treatment because Brilliant's proposal also contained "serious" errors (*e.g.*, an unexplained acronym, a misstated contract number) for which no weakness was assigned. Based on our review of the record, we find the agency's evaluation unobjectionable in this regard.

In response to A-A's assertions of unequal treatment, the USCIS provided a declaration from the TEC Chair as follows:

Brilliant's proposal showed, through a comprehensive narrative and in depth description and in some instances detailed and accurate work-flow diagrams, that it understood the . . . PWS tasks. Brilliant's proposal included extensive detail . . . in most all of the 41 reviewable tasks with charts highlighting a few of the larger processes, showing a clear understanding of expectations and requirements down to the most minute detail. While A-A's proposal showed a substantial understanding of FSF operations, A-A's proposal provided what can best be described as a high level overview of NRC operations. . . . A-A's proposal addressed some of the NRC tasks, but the tasks that were not addressed were the details the TEC needed to determine the depth of A-A's understanding. Although A-A included some workflow charts to provide some depth to its understanding of NRC operations, the charts had arrows missing and processes that that did not match the chart title. As a result, the TEC determined that A-A's proposal simply met the minimum requirements for its understanding of the NRC's Concept of Operations and did not assess a strength in A-A's technical approach for this criteria.⁶

AR, Tab 41, TEC Chair Declaration, Aug. 26, 2015, at 2.

We find the agency's technical evaluation was proper. As a preliminary matter, the agency evaluators reasonably found Brilliant's concept of operations, including the detailed understanding of the NRC records management process, to be a strength because the agency concluded that Brilliant's approach would significantly reduce the need for extensive government oversight and increase the likelihood of successful performance. See AR, Tab 40, TEC Report, at 17. Additionally, the agency evaluators reasonably found A-A's concept of operations did not provide the same level of detail (or consistency in the described methodology), such that it was not possible to determine whether A-A possessed the same depth of understanding. Moreover, there are aspects of the strength assigned to Brilliant's concept of operations (e.g., its strong focus to safeguard PII) that A-A does not allege also existed in its proposal. See Protest, July 17, 2015, at 22-27. Quite simply, because the agency reasonably concluded that A-A's concept of operations demonstrated only an adequate understanding of the records management process, the TEC appropriately concluded that no strength was warranted.

As another example, A-A argues that the agency unreasonably assigned only Brilliant's proposal a strength for having a pool of pre-qualified candidates to meet

⁶ The TEC Chair declaration also addressed each other instance where A-A alleged that its proposal included very similar solutions as those proposed by Brilliant.

surge events. The RFP required offerors to describe their management approach for surge events, RFP at § IV-5, and the TEC assigned Brilliant's proposal a strength for [DELETED]. AR, Tab 40, TEC Report, at 16. While A-A contends that it also proposed a [DELETED], the TEC found that A-A proposed to [DELETED] (thereby lessening the benefit associated with A-A's pre-qualified candidate pool). AR, Tab 41, TEC Chair Declaration, Aug. 26, 2015, at 3. Again we find the agency's decision not to assign A-A's proposal a strength here to be reasonable, and not unequal.

In our view, A-A's disparate treatment argument is premised on an improper "apples and oranges" comparison of the offerors' proposals. Quite simply, the record does not indicate that the offerors proposed the same features and were given different ratings. Rather, our review indicates that the offerors proposed different features and reasonably received different ratings. In sum, while the protester may believe that its proposal contained features that were substantially similar to those of Brilliant, we find A-A's disagreement with the agency's judgment insufficient to establish that the agency acted unreasonably.⁷

Past Performance Evaluation of Brilliant

A-A challenges the agency's past performance evaluation of Brilliant. The protester argues that none of Brilliant's own past performance references were relevant, such that it was improper for the agency to assign Brilliant's past performance a low risk rating. A-A argues that had the agency performed a proper evaluation of Brilliant's past performance, the awardee would have been lower rated than the protester. Our Office will examine an agency's evaluation of an offeror's past performance only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations, since determining the relative merit or relative relevance of an offeror's past performance is primarily a matter within the agency's discretion. Alliant Enter. JV, LLC, B-410352.5, B-410352.6, July 1, 2015, 2015 CPD ¶ 209 at 13; Richen Mgmt., LLC, B-409697, July 11, 2014, 2014 CPD ¶ 211 at 4. A protester's disagreement with the agency's judgment does not establish that an evaluation was improper. AT&T Corp., B-299542.3, B-299542.4, Nov. 16, 2007, 2008 CPD ¶ 65 at 19.

The RFP instructed each offeror to submit past performance references for itself and its major subcontractors. RFP § IV-6. The solicitation also instructed offerors

⁷ A-A also protests that, based on the strengths identified in its management approach and technical approach proposals, it also should have received excellent ratings. We find the ratings assigned to A-A's technical proposal in these areas to be reasonable and not disparate. Moreover, as detailed below, the record reflects that the SSA focused on the strengths and weaknesses identified in the offerors' proposals, and not the assigned adjectival ratings, when determining the offerors' relative technical merits.

to describe the relevance of their past performance references in the following areas: managing operations in more than one location; performing mailroom/warehouse operations; performing file operations; managing work with demanding quality standards and meeting quality standards; responding to workload fluctuations; and managing unexpected surges in effort similar to those in the PWS. Id. The RFP stated that the agency would evaluate offerors' record of relevant past performance for corporate commitment, quality of service, timeliness of performance, and effective teaming arrangements. RFP § V-3. However, the past performance evaluation factor did not define relevance or state how relevance would be assessed.

Brilliant submitted five past performance references as follows: (1) its SBA staff augmentation support services contract; (2) its Department of Justice (DOJ) program management, administrative, and clerical services contract; (3) its Internal Revenue Service (IRS) metadata and compliance data warehouse contract; (4) subcontractor Summit Technical Solutions' (STS)⁸ performance of the incumbent ROSS contract with USCIS; and (5) STS' contract with the Federal Aviation Administration (FAA) for mail and distribution services. AR, Tab 36, Brilliant Proposal, Oct. 31, 2014, Vol. II, Business Proposal, at 3-13. For each past performance reference submitted, Brilliant provided a description of the program, the relevance of the work performed as compared to the criteria set forth in the RFP instructions, as well as performance results and quality.⁹ AR, Tab 36, Brilliant Proposal, Oct. 31, 2014, Vol. II, Business Proposal, at 3.

The agency evaluators assessed the relevance of offerors' past performance references as compared to the criteria set forth in the RFP (e.g., managing operations in more than one location; performing mailroom/warehouse operations; performing file operations). AR, Tab 28, BEC Report, Annex 2, Past Performance, at 8-17; Tab 42, Contract Specialist Declaration, Aug. 28, 2015, at 1-8. With regard to Brilliant, the agency found that its SBA contract involved work similar to all six task areas; the DOJ contract involved work similar to five task areas; and the IRS contract involved work similar to four of the task areas. AR, Tab 42, Contract Specialist Declaration, Aug. 28, 2015, at 5-7; attach. 1, Brilliant Past Performance Worksheet, at 1. The agency evaluators also found both STS references, including its incumbent ROSS contract, were relevant in all six task areas. Id. The BEC concluded that all five of Brilliant's references were relevant and, based on a pattern

⁸ STS was proposed by Brilliant to perform 49 percent of the ROSS effort. AR, Tab 36, Brilliant Proposal, Oct. 31, 2014, Vol. II, Business Proposal, at 2.

⁹ Likewise, A-A's proposal included a matrix "demonstrating how [its] past performance maps to the six required ROSS contract areas" as set forth in the RFP instructions. AR, Tab 13, A-A Proposal, Oct. 31, 2014, Vol II, Business Proposal, at 3.

of high quality performance, assigned a low-risk rating to the awardee's past performance. AR, Tab 28, BEC Report, Annex 2, Past Performance, at 16-17.

We find the agency's evaluation of Brilliant's past performance to be proper. The record reflects that, in accordance with the solicitation, the agency reasonably considered both the relevance and quality of the offerors' references when assessing performance risk. Moreover, in light of the fact that the past performance evaluation factor did not define relevance, the agency reasonably used the criteria that were set forth in the proposal preparation instructions when determining relevance. The fact that these task criteria were broad and general in nature (e.g., managing operations in more than one location) does not make their use improper. Moreover, to the extent that A-A argues that the agency was required to determine whether an offeror's references were similar in size, scope, and complexity to the PWS requirements, see Protest, June 8, 2015, at 11, we find this amounts to a solicitation defect challenge, which is untimely. See 4 C.F.R. § 21.2(a)(1).

We also find that the agency's past performance evaluation of Brilliant reasonably took into account the references submitted by its subcontractor STS, including STS' performance of the incumbent ROSS contract. AR, Tab 42, Contract Specialist Declaration, Aug. 28, 2015, at 7; attach. 1, Brilliant Past Performance Worksheet. As a preliminary matter, the FAR states that agencies should take into account past performance information regarding predecessor companies, key personnel, and major subcontractors, when such information is relevant to an acquisition. FAR § 15.305(a)(2)(iii). Based on this provision, we have found the past performance of a proposed subcontractor properly may be considered in evaluating an offerors' past performance, where it is not expressly prohibited by the RFP. MCR Fed., LLC, B-401954.2, Aug. 17, 2010, 2010 CPD ¶ 196 at 9. Here, the RFP expressly provided that the agency would consider the past performance of major subcontractors. RFP § V-3. Given the fact that the RFP expressly anticipated consideration of a subcontractor's relevant experience in evaluating the awardee's ability to perform the RFP requirements, we find that it was reasonable for the agency to also favorably consider STS' prior experience in evaluating the awardee's ability to perform the RFP's requirements. Moreover, the agency found that not only were STS's references relevant as measured by the task criteria set forth in the solicitation,¹⁰ but that there were no concerns with STS' performance of the ROSS contract as evidenced by the contractor performance assessment report (CPAR) exceptional ratings. AR, Tab 28, BEC Report, Annex 2, Past Performance, at 17; Tab 30, Brilliant Past Performance Reports, at 12-24. In sum, although A-A points to minor shortcomings in STS' performance in 2011-12, we find no basis to object to

¹⁰ In fact, A-A does not dispute the relevance of STS' references, including its incumbent ROSS contract. See Protest, July 17, 2015, at 14-15.

the agency's determination that Brilliant's record of past performance (including the past performance of its major subcontractor) indicated low performance risk.¹¹

Evaluation of Offerors' Staffing Levels

A-A protests the agency's evaluation of offerors' proposed staffing levels. A-A contends that the internal USCIS estimate of full time equivalents (FTE) was unrealistically high, and resulted in a flawed evaluation of both A-A's and Brilliant's staffing plans under the management approach and technical approach subfactors. As detailed below, we find the protester's assertions to be meritless.

The evaluation of an offeror's proposal--including an offeror's staffing proposal--is a matter within the agency's discretion, and this Office will not reevaluate proposals; rather, we will review an agency's evaluation to determine whether the agency's judgments were reasonable and consistent with the stated evaluation criteria. See, e.g., HP Enter. Servs., LLC, B-410212.2, Jan. 26, 2015, 2015 CPD ¶ 54 at 9. A protester's disagreement with an agency's judgments does not render the evaluation unreasonable. Id.

The USCIS developed workload estimates for each ROSS task, which it provided to offerors in the solicitation. The agency-provided workload estimates were part of an Excel pricing template that offerors were to complete, exemplified as follows:

Product & Services	Estimated Annual Quantity	Prod[uctivity] Per Hr.	Labor Hrs. Required	# of FTEs	Total Price
Incoming Files	4,450,000				
Shelving Files	4,000,000				

RFP, Attach C., Pricing Template, at 1.

Essentially, an offeror had to determine its productivity rates for each PWS task, which in turn would determine its proposed direct labor hour amounts and FTEs (an offeror's pricing would then be determined based on the labor categories used to perform each task, and compensation rates to be paid to employees).

The agency's internal staffing estimate was determined in the same manner. The USCIS used the same estimated workload quantities provided to offerors in the RFP, and historical productivity rates, from which it derived its labor hour and FTE

¹¹ A-A also protests the agency's corporate experience evaluation of Brilliant, for the same reason (lack of relevance experience of Brilliant itself). We find that the agency reasonably evaluated this aspect of Brilliant's proposal in accordance with the RFP.

amounts. AR, July 27, 2015, at 9-10; Tab 33, Independent Government Cost Estimate (IGCE), FTE Template, at 1-4. Overall, the agency developed a base-year staffing estimate of 486.7 FTEs. Id. at 4. By contrast, Brilliant proposed base-year staffing of 395 FTEs,¹² and A-A proposed base-year staffing of 374 FTEs. AR, Tab 36, Brilliant Business Proposal, Oct. 31, 2014, at 36; Tab 25, A-A FPR, Jan. 26, 2015, at 25. The agency found the staffing proposed by Brilliant and A-A to be adequate, and did not assign either a strength or a weakness to the offerors' staffing levels.¹³ AR, Tab 40, TEC Report, at 11-12, 15-18.

A-A argues that the government's staffing estimate was unreasonably high. A-A further argues that had USCIS developed a reasonable (*i.e.*, lower) staffing estimate, then the agency evaluators would have found Brilliant's staffing to be wasteful and inflated (and assigned a weakness), and A-A's staffing to be innovative and efficient (and assigned a strength). We find no merit in the protester's assertions.

With regard to the agency's estimate, the primary difference between USCIS and A-A staffing levels was productivity rates. For example, for incoming files, A-A's productivity rate was 182 per hour while the agency's productivity rate was 134.2 per hour; likewise, for file audits, A-A's productivity rate was 832 per hour while the agency's productivity rate was 686.6 per hour. Compare AR, Tab 25, A-A FPR, Jan. 26, 2015, at 9, with AR, Tab 33, IGCE FTE Template, at 1. While A-A asserts that its assessment of staffing levels was more reasonable than the agency's, the protester's disagreement does not provide a basis for us to find that the agency's estimate was unreasonable. In this regard, A-A acknowledges that its proposal was based on historical productivity rates from 2009. Protest, July 17, 2015, at 31 n.14. The agency's productivity rates were based upon the more recent requirements from the incumbent ROSS contract, performed from 2010 to 2014. AR (July 27, 2015) at 9. The record also reflects that the agency's evaluation of offerors' staffing was reasonable and consistent with the stated evaluation criteria. The agency evaluators found the staffing proposals (including staffing levels) of both A-A and Brilliant, although lower than the government estimate, to be adequate to perform the work requirements. A-A's allegations of what would have occurred if the agency had had a lower staffing estimate amount to pure speculation.¹⁴

¹² While the agency evaluators reported that Brilliant's base-year staffing was 427 FTEs, AR, Tab 28, BEC Report, at 5, the offeror's proposal reflects that 395 FTEs was proposed. Id., Tab 36, Brilliant Business Proposal, Oct. 31, 2014, at 36.

¹³ While the agency found a strength in Brilliant's staffing approach (*i.e.*, transition plan) it was not related to the offeror's staffing level. AR, Tab 40, TEC Report, at 15.

¹⁴ We also find no merit to A-A's assertion that the agency's discussions with it regarding its initial staffing were misleading. The agency informed A-A of the one

Other A-A Protest Issues

A-A also raises other allegations that we find to be without merit. For example, the protester alleges that the agency's IGCE was flawed (i.e., unreasonably high) and resulted in an improper price reasonableness evaluation of Brilliant.¹⁵ Protest, July 17, 2015, at 35-36. The agency contends that its IGCE was accurate and, in any event, the evaluators properly determined Brilliant's price to be reasonable independent of the IGCE. AR, July 27, 2015, at 10-12. We find that A-A has failed to demonstrate competitive harm from the alleged error. See, e.g., Paragon TEC, Inc., B-405384, Oct. 25, 2011, 2011 CPD ¶ 240 at 9 (competitive prejudice is an essential element of a viable protest). The record reflects that, in addition to comparing offerors' prices to the IGCE, the agency also conducted a comparative evaluation of offerors' prices to each other. AR, Tab 28, BEC Report, at 3-4. Here the agency found that the A-A and Brilliant prices, while higher than the average price of all of the offerors, were both within 10 percent of the average (3 percent and 9.3 percent, respectively). Id. at 3. Moreover, the protester does not dispute the reasonableness of its own price (\$149.4 million), and Brilliant's price was only 8.7 percent higher than A-A's price (\$162.6 million). Accordingly, we find reasonable the agency's determination that all offerors' prices were "fair and reasonable due to adequate price competition." Id. at 3.

A-A also alleges that Brilliant had an unfair competitive advantage as a result of its subcontractor's, STS,--the incumbent ROSS contractor--knowledge of undisclosed evaluation criteria. The protester contends, based on a letter provided by another

specific area in which its proposed staffing was considered inadequate (i.e., the NCR Extension Site), AR, Tab 17, Discussions with A-A, Dec. 18, 2014, at 1, and the offeror made an independent business decision regarding how to address the agency's concern. AR, Tab 24, A-A FPR, Jan. 26, 2015, Vol. I, Technical Proposal, at 1. In conducting discussions with offerors, an agency may not consciously mislead or coerce an offeror into raising its price. Serco Inc., B-407797.3, B-407797.4, Nov. 8, 2013, 2013 CPD ¶ 264 at 5. However, we will not find discussions to be improper where the agency in good faith provides accurate information to an offeror, even where the offeror uses that information to its ultimate competitive detriment. Id. Ultimately, A-A's decision to revise certain prices upward reflected the exercise of the firm's own business judgment and not improper conduct by the agency. See EMR, Inc., B-406625, July 17, 2012, 2012 CPD ¶ 209 at 4-5; Academy Facilities Mgmt.--Advisory Opinion, B-401094.3, May 21, 2009, 2009 CPD ¶ 139 at 6.

¹⁵ Before awarding a fixed-price contract, an agency is required to determine that the price offered is fair and reasonable. FAR § 15.402(a). An agency's concern in making a price reasonableness determination focuses primarily on whether the offered prices are higher than warranted. See Lilly Timber Servs., B-411435.2, Aug. 5, 2015, 2015 CPD ¶ 246 at 3.

unsuccessful offeror, Phoenix Data Corporation, that STS allegedly informed Phoenix--when the two concerns were contemplating a teaming arrangement prior to the issuance of the solicitation--that STS had detailed knowledge of the ROSS work requirements and inside information about agency preferences that would not be included in the PWS. Protest, July 17, 2015, at 36-37; exh. D, Phoenix Letter to A-A, July 17, 2015, at 1. We find that A-A's allegation here lacks the necessary hard facts.

A protester must identify hard facts that indicate the existence or potential existence of an unfair competitive advantage; mere inference or suspicion of such is not enough. TeleCommunication Sys., Inc., B-404496.3, Oct. 26, 2011, 2011 CPD ¶ 229 at 3; Science Applications Int'l Corp., B-406899, Sept. 26, 2012, 2012 CPD ¶ 282 at 8-9. Here, A-A provides no hard facts to support its assertion about what unequal access to information STS allegedly possessed. First, there is no evidence (nor has the protester alleged) that STS had any involvement in preparing the PWS or RFP. Further, any detailed knowledge about the ROSS work requirements that STS gained as an incumbent contractor constitutes a fair--not unfair--competitive advantage. See, e.g., Companion Data Servs., LLC, B-410022, B-410022.2, Oct. 9, 2014, 2014 CPD ¶ 300 at 11 n.19; Onsite Health Inc., B-408032, B-408032.2, May 30, 2013, 2013 CPD ¶ 138 at 9-10. At best, A-A makes bald allegations that STS knew of the agency's unstated desire for a higher-priced, higher-staffed solution, based on conversations it allegedly had with another disappointed offeror. Protest, July 17, 2015, at 37. However, despite now alleging that STS has inside information, there is no evidence that Phoenix ever brought STS's alleged unfair competitive advantage to the attention of the contracting officer prior to award.¹⁶ Moreover, as the RFP informed offerors that the nonprice factors (including staffing) were significantly more important than price, we fail to see how (even if accurate) this was an unstated agency preference. In sum, A-A simply has not provided sufficient facts to indicate the existence or potential existence of an unfair competitive advantage.

Best Value Determination

Lastly, A-A challenges the agency's source selection decision. The protester argues that the agency failed in its obligation to perform a proper price/technical tradeoff analysis. We disagree.

¹⁶ In fact, Phoenix appeared unconcerned with STS's alleged unequal access to information at any time before their potential teaming agreement fell apart. See Brilliant Comments, Aug. 3, 2015, Declaration of STS President, July 30, 2015, attach. 1, Phoenix Letter to STS, July 14, 2014 (requesting STS fulfill its verbal commitment to team with Phoenix); attach. 2, Letter from STS Counsel to Phoenix, July 15, 2014 (stating that no teaming agreement had come into existence between the parties).

The record reflects that the agency's source selection decision was reasonable and consistent with the solicitation's evaluation criteria, and adequately documented, i.e., the decision sets forth in extensive detail the SSA's rationale for the tradeoff between price and nonprice considerations in making the award decision. See Portage, Inc., B-410702, B-410702.4, Jan. 26, 2015, 2015 CPD ¶ 66 at 19. As the record demonstrates, the SSA reviewed the relative importance of the solicitation's evaluation criteria, recognized the relative strengths and weaknesses of the offerors' proposals, and identified in her selection decision the numerous technical advantages offered by Brilliant that made it "head and shoulders" superior to that of the other offerors, including A-A. AR, Tab 32, Source Selection Decision, at 2. The SSA also detailed why she believed Brilliant's technical advantages outweighed the additional costs to the government, and adequately documented the rationale for her selection decision. As the SSA stated, "Brilliant's technical approach demonstrates the expert knowledge and ability to perform the required operational tasks and activities at the highest level supporting efficiency and accuracy," id. at 8, and such technical superiority was worth the associated price premium. Id. at 9.

The protest is denied.

Susan A. Poling
General Counsel