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Decision

Matter of: AT&T Government Solutions, Inc.

File: B-413012; B-413012.2

Date: July 28, 2016

Daniel R. Forman, Esq., Mark A. Ries, Esq., and Jonathan M. Baker, Esq., Crowell & Moring LLP, for the protester.

Kevin P. Mullen, Esq., Morrison & Foerster LLP, for MacAulay-Brown, Inc., the intervenor.

Col. Robert J. Preston, II, Lt. Col. Mark E. Allen, Maj. David S. Gilkes, and Lawrence M. Anderson, Esq., Department of the Air Force, for the agency.

Jonathan L. Kang, Esq., and Kenneth E. Patton, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the contract award was tainted by an organizational conflict of interest is sustained where the record does not demonstrate that the agency reasonably evaluated a potential unequal access to information conflict arising from the relationship between the awardee and one of its proposed subcontractors.
2. Protest that the agency unreasonably evaluated the awardee's past performance is sustained where the record shows that the evaluation contained errors in the assignment of adjectival ratings and where the source selection authority relied upon those errors in the award decision.
3. Protest that the agency unreasonably evaluated the realism of the awardee's proposed cost/price and the acceptability of its technical proposal is denied where the record shows that the agency's evaluations were reasonable.
4. Protest that the agency failed to conduct meaningful discussions with the protester is denied because the agency found the protester's proposed cost/price was acceptable, and was therefore not required to advise the protester that its cost/price was higher than the awardee's.

DECISION

AT&T Government Solutions, Inc., of Columbia, Maryland, protests the award of a contract to MacAulay-Brown, Inc. of San Antonio, Texas, by the Department of the Air Force under request for proposals (RFP) No. FA8773-15-R-8301, for computer network operations and cyberspace warfare operations in support of an acknowledged special access program. The protester argues that the award to MacAulay-Brown was improper for the following reasons: (1) the award was tainted by an unequal access to information organizational conflict of interest (OCI) arising from the relationship between the awardee and one of its proposed subcontractors, (2) the agency unreasonably evaluated the offerors' past performance, (3) the agency unreasonably evaluated the realism of the awardee's proposed cost/price, (4) the agency unreasonably evaluated the acceptability of the awardee's proposed technical approach, (5) the agency failed to conduct meaningful discussions with the protester, and (6) the award decision was unreasonable.

We sustain the protest.

BACKGROUND

The RFP seeks to obtain services in support of the Air Force's 24 AF and Cyber Mission Forces units. The purpose of the requirement is to obtain "program management and in-depth operational knowledge of full spectrum Computer Network Operations and Cyberspace Warfare Operations support to network warfare mission areas." Contracting Officer's Statement (COS) (May 16, 2016) at 2. AT&T was the incumbent contractor for these requirements on two prior contracts, known as Bristol I and Bristol II. Id. at 6. The current contract requirement is known as Wrangler. Id.

The Air Force issued a draft RFP at a bidder's conference on March 24, 2015. The final RFP was issued on September 25, and anticipated the award of a single indefinite-delivery, indefinite-quantity contract with a base period of 1 year and two 1-year options. The solicitation contained cost-plus-fixed-fee line items, fixed-price line items for facilities and transition, and cost-reimbursement line items for travel and materials. RFP at 3-6. The competition was limited to a pool of pre-cleared vendors, based on a justification and approval document that authorized other than full and open competition. Agency Memorandum of Law (MOL) (May 15, 2016) at 3. The solicitation advised that proposals would be evaluated on the basis of the following three factors: (1) technical acceptability, (2) past performance, and (3) cost/price. RFP § M at 2. The technical acceptability factor had two sub factors: (1) staffing program management approach; and (2) scenario 1: "Silent [short message service (SMS)]." Id.

For the technical acceptability factor, the Air Force was to evaluate offerors' "demonstrated understanding and capability to satisfy the Government's

requirements.” Id. at 2. The two sub factors of the technical acceptability factor were to be evaluated on a pass/fail basis, and a failure to meet the requirements of either sub factor would result in an overall fail rating. Id. With respect to the past performance factor, the Air Force was to assign a performance confidence assessment rating based on an evaluation of information concerning the relevancy, recency, and quality of recent ongoing or prior efforts. Id. at 5-7. For the cost/price factor, the agency was to evaluate for reasonableness, completeness, realism, and balance. Id. at 7. As relevant here, the RFP required offerors to propose a professional compensation plan and advised that proposals would be evaluated in accordance with Federal Acquisition Regulation (FAR) clause 52.222-46, Evaluation of Compensation for Professional Employees. Id. at 9.

For purposes of award, the RFP explained the basis for the award as follows:

This is a competitive best value source selection, evaluating technical, past performance, and price, in which competing offerors’ past performance history will be evaluated on a basis approximately equal to cost or price considerations where the Government may elect to trade present/past performance for price if warranted. In accordance with (IAW) FAR 15.101-1 (c), the government reserves the right to award a contract to other than the lowest priced offer if the lowest priced offeror is judged to have a performance confidence assessment of “Satisfactory Confidence” or lower. In that event, the Source Selection Authority shall make an integrated assessment best value award decision.

RFP § M at 1. The RFP also explained that “[t]rade-off procedures will be utilized with non-cost factors and cost/price (past performance and cost/price) approximately equal and technical sub factors of technical approach, staffing and transition being equal and evaluated on a pass/fail basis.” Id. at 2.

The Air Force received proposals from two offerors, AT&T and MacAulay-Brown, by the closing date of October 26. COS (May 13, 2016) at 12. The agency conducted two rounds of discussions with the offerors, and then held a third round of discussions with MacAulay-Brown to address outstanding issues regarding the technical acceptability of its proposal. Id. at 20-21. After discussions were completed, both offerors were given the opportunity to submit final proposal revisions (FPRs) by March 7, 2016. Id. at 21.

The Air Force's final evaluation ratings for the two offerors' proposals were as follows:¹

	AT&T	MacAulay-Brown
TECHNICAL	ACCEPTABLE	ACCEPTABLE
PAST PERFORMANCE	SUBSTANTIAL CONFIDENCE	SUBSTANTIAL CONFIDENCE
PROPOSED COST/PRICE	\$46,665,736	\$37,880,187
EVALUATED COST/PRICE	\$46,665,736	\$38,532,996

Agency Report (AR), Tab 129, Source Selection Decision Document (SSDD), at 3.

The source selection authority (SSA) received a final decision briefing and the proposal analysis report, which detailed the agency's evaluation of the offerors' proposals. The SSA's award decision comparing the offerors' proposals set forth the following rationale for award to MacAulay-Brown:

In considering a trade-off under the criteria in the RFP, I find that the price premium of \$8,785,548.84 from the proposed prices (or 17.4% more from the total evaluated prices) for AT&T Government Solutions Inc.'s same performance confidence rating of "Substantial Confidence" is of no benefit to the Government. The same past performance confidence rating with only minor differences does not substantiate paying a higher price. Based on my integrated assessment of both proposals and in accordance with the evaluation criteria for the Wrangler requirement, it is my decision that the proposal submitted by MacAulay-Brown, Inc., in the amount of \$37,880,187.48 represents the best overall value to the Government. I direct contract award to MacAulay-Brown, Inc.

AR, Tab 129, SSDD, at 7.

The Air Force notified both offerors on April 11 that MacAulay-Brown had been awarded the contract. The agency provided a debriefing to AT&T on April 19, and this protest followed.

¹ For the past performance factor, the agency assigned offerors' proposals one of the following ratings: substantial confidence, satisfactory confidence limited confidence, no confidence or unknown confidence (neutral). RFP § M at 7.

DISCUSSION

AT&T contends that the Air Force's award to MacAulay-Brown was improper for five primary reasons: (1) the agency failed to reasonably consider an OCI arising from MacAulay-Brown's relationship with a firm that was identified in the solicitation as having a potential unequal access to information OCI, (2) the agency unreasonably evaluated the awardee's past performance, (3) the agency unreasonably evaluated the realism of the awardee's proposed cost/price, (4) the agency unreasonably evaluated the acceptability of the awardee's technical proposal, and (5) the agency failed to provide the protester with an opportunity for meaningful discussions. For the reasons discussed below, we sustain AT&T's protest regarding the agency's OCI evaluation and the evaluation of MacAulay-Brown's past performance.²

The evaluation of an offeror's proposal is a matter within the agency's discretion. National Gov't Servs., Inc., B-401063.2 et al., Jan. 30, 2012, 2012 CPD ¶ 59 at 5. A protester's disagreement with the agency's judgment in its determination of the relative merit of competing proposals, without more, does not establish that the evaluation was unreasonable. VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4. While we will not substitute our judgment for that of the agency, we will question the agency's conclusions where they are inconsistent with the solicitation criteria and applicable procurement statutes and regulations, undocumented, or not reasonably based. Public Commc'ns Servs., Inc., B-400058, B-400058.3, July 18, 2008, 2009 CPD ¶ 154 at 17. Competitive prejudice is an essential element of a viable protest, and we will sustain a protest only where the protester demonstrates that, but for the agency's improper actions, it would have had a substantial chance of receiving the award. DRS ICAS, LLC, B-401852.4, B-401852.5, Sept. 8, 2010, 2010 CPD ¶ 261 at 21.

Organizational Conflict of Interest

² Although this decision does not address every argument raised by AT&T, we have reviewed all of the protester's challenges and find that none provides a basis to sustain the protest, except for those specifically identified herein. AT&T also raised the following protest grounds, which were subsequently withdrawn: (1) the agency failed to conduct a cost realism analysis, (2) the agency failed to evaluate costs for non-major subcontractors, (3) the agency engaged in unequal treatment in its assessment of cost/price for non-major subcontractors, (4) MacAulay-Brown failed to address which members of its team would perform specific PWS requirements, (5) the agency unreasonably found MacAulay-Brown's proposal acceptable under subfactor 2 of the technical acceptability factor, and (6) the agency should have excluded MacAulay-Brown's proposal for failing to demonstrate that its subcontractors had approved accounting systems. Protester's Comments (June 7, 2016) at n.4; Protester's Supp. Comments (June 22, 2016) at n.2.

AT&T argues that the Air Force failed to reasonably evaluate a potential OCI that arose from MacAulay-Brown's relationship with [DELETED], which was proposed as a subcontractor by the awardee. The protester contends that although [DELETED] had been identified in the RFP as a firm that had a potential OCI arising from its role providing acquisition support for the Wrangler program, the agency unreasonably concluded any potential conflict had been avoided or mitigated. For the reasons discussed below, we agree with AT&T that the agency's findings here were unreasonable and sustain the protest.

The FAR requires that contracting officers identify and evaluate potential organizational conflicts of interest, and directs contracting officers to avoid, neutralize, or mitigate potential significant conflicts of interest so as to prevent an unfair competitive advantage or the existence of conflicting roles that might impair a contractor's objectivity. FAR §§ 9.504(a), 9.505. The situations in which OCIs arise, as described in FAR subpart 9.5 and the decisions of our office can be broadly categorized into three types: (1) biased ground rules; (2) unequal access to information; and (3) impaired objectivity. As relevant here, an unequal access to information OCI exists where a firm has access to nonpublic information as part of its performance of a government contract, and where that information may provide the firm an unfair competitive advantage in a later competition for a government contract. FAR § 9.505(b); Cyberdata Techs., Inc., B-411070 et al., May 1, 2015, 2015 CPD ¶ 150 at 6. As the FAR makes clear, the concern regarding this category of OCI is that a firm may gain a competitive advantage based on its possession of "[p]roprietary information that was obtained from a Government official without proper authorization," or "[s]ource selection information . . . that is relevant to the contract but is not available to all competitors, and such information would assist that contractor in obtaining the contract." FAR§ 9.505(b); see ITT Corp.--Elec. Sys., B-402808, Aug. 6, 2010, 2010 CPD ¶ 178 at 5.

The identification of conflicts of interest is a fact-specific inquiry that requires the exercise of considerable discretion. Guident Techs., Inc., B-405112.3, June 4, 2012, 2012 CPD ¶ 166 at 7. See also Axiom Res. Mgmt., Inc. v. United States, 564 F.3d 1374, 1382 (Fed. Cir. 2009). A protester must identify hard facts that indicate the existence or potential existence of a conflict; mere inference or suspicion of an actual or potential conflict is not enough. TeleCommunication Sys. Inc., B-404496.3, Oct. 26, 2011, 2011 CPD ¶ 229 at 3-4. Our Office has held that once hard facts establish that an actual or potential OCI exists, the protester is not required to demonstrate prejudice; rather, harm from the conflict is presumed to occur. See McCarthy/Hunt JV, B-402229.2, Feb. 16, 2010, 2010 CPD ¶ 68 at 10. In the context of an unequal access to information OCI, for example, the protester need not demonstrate prejudice by establishing that the awardee's access to competitively useful nonpublic information provided an actual advantage. Health Net Fed. Servs., LLC, B-401652.3, B-401652.5, Nov. 4, 2009, 2009 CPD ¶ 220

at 28; Aetna Gov't Health Plans, Inc.; Foundation Health Fed. Servs., Inc., B-254397.15 et al., July 27, 1995, 95-2 CPD ¶ 129 at 18-19.

Nonetheless, although we presume prejudice where a protest establishes hard facts that constitute an actual or potential OCI, that presumption is rebuttable. BAE Sys. Tech. Solutions & Servs., Inc., B-411810.3, June 24, 2016, 2016 CPD ¶ 174 at 7; NetStar-1 Gov't Consulting, Inc., B-404025.2, May 4, 2011, 2011 CPD ¶ 262 at 8. In reviewing protests that challenge an agency's conflict of interest determinations, our Office reviews the reasonableness of the contracting officer's investigation and, where an agency has given meaningful consideration to whether an OCI exists, we will not substitute our judgment for the agency's, absent clear evidence that the agency's conclusion is unreasonable. DV United, LLC, B-411620, B-411620.2, Sept. 16, 2015, 2015 CPD ¶ 300 at 6.

[DELETED] was an incumbent contractor providing support for the Air Force 688 CyberWing/Security Office, (CW/SO) and in that capacity provided acquisition support for the agency regarding the Wrangler program.³ AR, Tab 143, [DELETED] OCI Notice, at 1; Supp. COS (June 13, 2016) at 6-7. [DELETED] was also one of the firms that had expressed interest in competing for the award of the Wrangler contract. AR, Tab 143, [DELETED] OCI Notice, at 1. In August 2015, the contracting officer found that there was a potential unequal access to information OCI arising from [DELETED]'s role providing acquisition support for the Wrangler program.⁴ Id.; Supp. COS (June 13, 2016) at 7. The contracting officer noted that [DELETED]'s contract did not have "mandatory non-disclosure agreements (NDA) or non-compete clauses, "and that the absence of these clauses gave rise to a concern for a potential OCI. Id.

On August 11, the contracting officer contacted [DELETED] to advise it of the potential OCI, and to request that the firm provide an OCI mitigation plan to address the agency's concerns. AR, Tab 143, [DELETED] OCI Notice, at 1. The contracting officer explained that "[i]n the execution of their security support duties, [DELETED] contractor employees have processed source selection sensitive information pertaining to the Wrangler effort." Id. As a result, the agency advised [DELETED] that "the Government has identified an OCI in relation to [the Wrangler]

³ Prior to May 2015, [DELETED]'s support contract had been performed for a different Air Force command. Supp. COS (June 13, 2016) at 6-7.

⁴ The contemporaneous record and the agency's response to the protest refer variously to the conflict regarding [DELETED] as an OCI and a potential OCI. In light of agencies' obligations under the FAR to address actual and potential OCIs, see FAR §§ 9.504(a), 9.505, and the facts in the record, the use of the term "potential" herein is not relevant to the outcome of our conclusions.

RFP,” and that “[a]s an interested vendor on the Wrangler requirement, access to the information processed by the 688 CW/SO presents an unfair competitive advantage in accordance with Federal Acquisition Regulation (FAR) 9.505(b).” Id. The agency explained the basis for the OCI as follows:

The nature of the OCI, unequal access to information, stems from [DELETED] employee access to the names of the competitive pool of vendors, including all proposal team member information. Additionally, [DELETED] employees have processed the personnel security information for the incumbent contractor on Wrangler’s predecessor task orders on Rialto and Bristol II that support the 688 CW.

Id.

[DELETED] submitted its OCI mitigation plan on August 27. AR, Tab 144, [DELETED] OCI Mitigation Plan. [DELETED] subsequently advised the agency on August 31 that it did not intend to submit a proposal as a prime contractor in response to RFP. AR, Tab 145, [DELETED] OCI Review, at 1. Based on [DELETED]’s notice, the contracting officer concluded in a September 3 memorandum that [DELETED] was no longer an interested party for the Wrangler competition, and “[t]herefore, the OCI identified in the 11 August 2015 memorandum requires no further action on the part of the Contracting Officer and is considered closed.” Id. As the contracting officer explained in her response to the protest, the OCI investigation was closed “before making a final determination and finding regarding whether [[DELETED]’s OCI plan] was sufficient.” Supp. COS (June 13, 2016) at 8.

Although the contracting officer found that there was no need to complete the review of [DELETED]’s proposed mitigation plan, she concluded that the following tailored OCI clause should be added to the solicitation “to preclude future OCI issues with the Wrangler requirement”:

(a) There is potential organizational conflict of interest (see FAR Subpart 9.5, Organizational and Consultant Conflicts of Interest) due to unequal access to information. Accordingly:

(1) Restrictions are needed to ensure that if any of the following subcontractors or teaming partners are included as part of the offeror’s proposal, Mantech, Inc., Global Resource Solutions, Inc. (GRS), or Dependable Global Solutions, Inc. (DGS) an OCI mitigation plan shall be required as part of the offeror’s proposal.

(2) As part of the proposal,' the offeror shall provide the Contracting Officer with complete information of previous or ongoing work that is in any way associated with the contemplated acquisition.

(b) The organizational conflict of interest clause included in this solicitation may not be modified or deleted during negotiations.

Id. RFP at 45.

The Air Force issued the solicitation on September 25, and received timely proposals from MacAulay-Brown and AT&T. MacAulay-Brown's proposal listed [DELETED] as a subcontractor. On November 18, the agency advised MacAulay-Brown that its proposal did not include an OCI plan, as required. AR, Tab 146, Email from Agency to MacAulay-Brown (Nov. 18. 2015) at 1. MacAulay-Brown provided the required OCI mitigation plan on December 9. AR, Tab 147, MacAulay-Brown OCI Mitigation Plan.

The contracting officer reviewed MacAulay-Brown's OCI mitigation plan and prepared a 1-page memorandum, dated January 8, 2016, which concluded that there was no disqualifying OCI regarding the firm's relationship with [DELETED]. Specifically, the contracting officer "determined that the potential Organizational Conflict of Interest (OCI) identified in MacAulay Brown, Inc.'s response to the RFP FA8773-15-R-8301, Wrangler requirement, did not impact the integrity of the procurement and is considered resolved." AR, Tab 148, MacAulay-Brown OCI Review, at 1. The contracting officer found that although MacAulay-Brown's proposed OCI mitigation plan "appears to comprehensively address how MacAulay-Brown, Inc. will prevent future OCIs," the plan "did not explicitly define its approach for mitigating the potential OCI created by teaming with [DELETED]."

The contracting officer nonetheless concluded there was no unequal access to information OCI arising from MacAulay Brown's relationship with [DELETED]. Id. This conclusion was based primarily on the contracting officer's finding that MacAulay-Brown's proposal did not contain information which indicated that [DELETED] had improperly provided proprietary or source-selection sensitive information to the awardee: "[I]t is evident from [] MacAulay-Brown, Inc.'s proposal that proprietary information regarding the incumbent's staffing approach was not used in its proposal development. Therefore, it appears [DELETED] abided by its OCI plan established prior to RFP release, and did not share source selection sensitive Information with MacAulay-Brown, Inc." Id.

In the contracting officer's response to the protest, she further explained that because MacAulay-Brown's proposal did not "mirror" certain staffing information available to [DELETED] through its performance of the acquisition support contract for the Wrangler program, she found no evidence that [DELETED] gave MacAulay-Brown access to this information:

There was no correlation between the proposed staffing and the security access documents process by the 688 CW/IP security contractors. Based on the fact that the proposal did not mirror incumbent contract staffing levels, it is reasonable to surmise that [DELETED] had properly followed its own OCI mitigation plan to ensure that proprietary incumbent information was not provided to [DELETED] leadership or any party.

Supp. COS (June 13, 2016) at 9.

Additionally, the contracting officer noted that the seven performance work statements (PWS) in the RFP provided estimates of the level of effort required for the required tasks. Id. (citing PWS Nos. 1-7). Here too, the contracting officer found that because MacAulay-Brown's proposed level of staffing did not reflect the incumbent's staffing, this implied that [DELETED] had not improperly provided information to the awardee:

As the staffing levels were predefined in each PWS and [MacAulay-Brown]'s initial proposal neither reflected incumbent staffing or the PWS pre-defined levels of effort, it is reasonable to believe that [DELETED] adequately followed their internal processes and ensured there was no unequal access to source selection information from [DELETED] contractor security personnel.

Id.

To summarize, the record here shows that the Air Force acknowledged that [DELETED] had access to information which could have given rise to an unfair competitive advantage. AR, Tab 143, [DELETED] OCI Notice (Aug. 11, 2015), at 1; Supp. COS (June 13, 2016) at 6-7; RFP at 45. For this reason, offerors were required to submit OCI plans if they intended to subcontract with [DELETED]. RFP at 45. As discussed above, the contracting officer concluded that MacAulay-Brown's proposed OCI mitigation plan did not address the conflicts arising from [DELETED]. AR, Tab 148, MacAulay-Brown OCI Review, at 1. Instead, the contracting officer concluded that [DELETED]'s plan, in effect, had immunized MacAulay-Brown from the possibility of an OCI arising from access to information from [DELETED]. Id.

AT&T first argues that the contracting officer unreasonably concluded that the absence of certain information from MacAulay-Brown's proposal indicated that the awardee did not have access to proprietary or source-selection sensitive information from [DELETED]. The protester contends that the contracting officer's analysis reflects an inference that does not support the conclusion that the potential

unequal access to information OCI identified by the agency had been avoided or mitigated. We agree with AT&T.

As discussed above, the contracting officer concluded that there was no “correlation between the proposed staffing and the security access documents process” available to acquisition support contractors such as [DELETED], because MacAulay-Brown’s proposal “did not mirror incumbent contract staffing levels.” Supp. COS (June 13, 2016) at 9. The contracting officer also cited the fact that the PWS provided estimates of the anticipated level of effort. Id. Because the awardee did not propose its staffing at the levels provided by the PWS or at the levels used by the incumbent contractor, the contracting officer concluded that [DELETED] did not improperly provide MacAulay-Brown with information. Id.

AT&T argues the fact that a non-incumbent contractor proposes a different staffing level than the incumbent contractor does not reasonably demonstrate that the non-incumbent contractor was not given access to the incumbent contractor’s information. We agree. Although the RFP defined level of effort, offerors were permitted to propose their own labor categories and labor mix. RFP § L at 14. Moreover, the contracting officer does not appear to have considered the possibility that a non-incumbent contractor could have made use of the incumbent contractor’s proprietary information without necessarily “mirroring” the specific staffing levels.

In short, the contracting officer’s inference that MacAulay-Brown’s improper access to proprietary or source-selection sensitive information from [DELETED] would only be manifested in a limited set of circumstances that would be obvious from a review of the awardee’s proposal is not reasonable and does not provide a basis for concluding that the potential OCI identified by the agency had been avoided or mitigated. The contracting officer’s findings therefore do not rebut the presumption of prejudice that arises from the potential OCI created by AT&T’s relationship with [DELETED]. See Health Net Fed. Servs., LLC, supra.

Second, AT&T argues that the contracting officer’s OCI analysis erred by concluding that [DELETED]’s OCI mitigation plan effectively mitigated the concern regarding the potential that MacAulay Brown improperly received information from [DELETED]. The protester contends that although the contracting officer’s December 2015 memorandum inferred that the absence of recognizable evidence of improperly disclosed information demonstrated that [DELETED] had followed its OCI plan, there is no evidence that the contracting officer evaluated that plan. We agree with AT&T.

As our Office has held, mitigation efforts that screen or wall-off certain individuals within a company from others, in order to prevent an improper disclosure of information, may be an effective means to address an unequal access to information OCI. Enterprise Info. Sys., Inc., B-405152 et al., Sept. 2, 2011,

2011CPD ¶ 174 at 11; Aetna Gov't Health Plans, Inc.; Foundation Health Fed Servs., Inc., supra at 13.

The contracting officer's September 2015 memorandum regarding [DELETED]'s mitigation plan stated that, because the firm had withdrawn as a potential prime contractor for the RFP, "the OCI identified in the 11 August 2015 memorandum requires no further action on the part of the Contracting Officer and is considered closed." AR, Tab 145, [DELETED] OCI Review, at 1. See also Supp. COS (June 13, 2016) at 8 (the OCI investigation was closed "before making a final determination and finding regarding whether [[DELETED]'s OCI plan] was sufficient."). This memorandum therefore did not make any findings regarding the adequacy of [DELETED]'s mitigation plan or otherwise conclude that it would be an effective plan to mitigate the unequal access to information OCI.

Similarly, the contracting officer's December 2015 memorandum regarding MacAulay-Brown's mitigation plan made no specific conclusions regarding the terms of [DELETED]'s mitigation plan. As discussed above, the contracting officer found that MacAulay-Brown's mitigation plan "did not explicitly define its approach for mitigating the potential OCI created by teaming with [DELETED]." Id. Instead, the contracting officer inferred that the absence of specific references to information indicated that "[DELETED] abided by its OCI plan established prior to RFP release, and did not share source selection sensitive information with MacAulay-Brown Inc." Id. In effect, the contracting officer's conclusion that MacAulay-Brown did not have a disqualifying OCI rests on the adequacy of [DELETED]'s OCI mitigation plan, despite the fact that the contracting officer had never documented any findings regarding the plan.

The Air Force's response to the protest in its supplemental legal memorandum argues that the terms of the [DELETED] proposed OCI mitigation plan were adequate to address the concerns raised by the protester. For example, the agency generally argues that the terms of [DELETED]'s OCI plan prohibited improper disclosure of information. See Supp. MOL (June 15, 2016) at 32-33. The agency does not, however, specifically contend that the contracting officer reviewed [DELETED]'s OCI plan as part of her review of MacAulay-Brown's OCI mitigation plan. Instead, the Air Force contends that the contracting officer's initial review of the [DELETED]'s OCI mitigation plan "resolved" the matter, id. at 29, and argues that this resolution was a conclusive finding to which our Office should give deference: "[T]he decision by the contracting officer to initially close out the OCI issue on or about September 3, 2015, after investigation of the issue, should be accorded great weight. Id. at 33.

As the record shows, however, neither of the contracting officer's two contemporaneous memoranda regarding her OCI analysis addressed the terms of [DELETED]'s proposed mitigation plan. AR, Tab 145, [DELETED] OCI Review, at 1; Tab 148, MacAulay-Brown OCI Review, at 1. In fact, as discussed above, the

September 2015 review did not draw any conclusions regarding the adequacy of [DELETED]'s OCI mitigation plan. AR, Tab 145, [DELETED] OCI Review, at 1; Supp. COS (June 13, 2016) at 8 (the OCI investigation was closed “before making a final determination and finding regarding whether [[DELETED]'s OCI plan] was sufficient.”). Similarly, the contracting officer’s response to the protest did not address the terms of [DELETED]'s proposed mitigation plan. In this regard, the contracting officer’s analysis merely assumes that [DELETED]'s plan for avoiding the improper disclosure of proprietary and source-selection sensitive information was a reasonable and effective approach, and that it had been in effect. Supp. COS (June 13, 2016) at 9.⁵ Because the record does not address why the contracting officer believed that [DELETED]'s OCI mitigation plan addressed any potential concerns regarding [DELETED]'s unequal access to information concerning its role providing acquisition support for the Wrangler program, we find that the contracting officer’s conclusion that the OCI had been avoided or mitigated is not supported by the record. See L-3 Servs., Inc., B-400134.11, B-400134.12, Sept. 3, 2009, 2009 CPD ¶ 171 at 13.

Based on this record, we conclude that the contracting officer’s analysis of the potential unequal access to information OCI arising from MacAulay-Brown’s relationship with [DELETED] was unreasonable. Although our Office recognizes that contracting agencies are afforded substantial deference in their consideration of OCI matters, we find here that the contracting officer’s analysis drew unreasonable inferences regarding the content of MacAulay-Brown’s proposal, and further find that the record does not show that the contracting officer gave meaningful consideration to the terms of the [DELETED] OCI mitigation plan upon which her analysis relied. For these reasons, we sustain this protest ground.⁶

⁵ In addition, the Air Force’s legal memorandum argues that the terms of a MacAulay-Brown procurement policy, dated May 1, 2015, admonished the firm’s employees not to obtain access to procurement sensitive information. Supp. MOL (June 15, 2016) at 34 (citing AR, Tab 147, MacAulay-Brown OCI Mitigation Plan, at 35). However, neither the contracting officer’s contemporary analysis of the OCI issues, nor her response to the protest, references the MacAulay-Brown procurement policy. For this reason, we find no basis to conclude that the MacAulay-Brown procurement policy supports the agency’s conclusion regarding the OCI issues here.

⁶ The Air Force also argues that the timing of [DELETED]'s withdrawal from the competition in late August 2015 demonstrates that there was “no risk” that the firm could have improperly disclosed information to MacAulay-Brown prior to that time. Supp. MOL (June 15, 2016) at 36 (“[I]t is preposterous to believe that [DELETED], as a competitor on the same contract that [MacAulay-Brown] was competing for early on in the procurement, would share any competitively beneficial information with either [MacAulay-Brown] or AT&T. [DELETED] was in this ‘fellow competitor’

(continued...)

Past Performance Evaluation

Next, AT&T argues that the Air Force unreasonably evaluated the offerors' past performance. The protester raises three primary arguments: (1) the evaluation record shows that the agency's assignment of relevance ratings for the awardee's past performance references was in error, (2) the agency interpretation of the term "ongoing," for purposes of assessing whether a contract past performance reference was recent, was inconsistent with the RFP's definition, (3) the agency treated the offerors unequally when contacting their past performance references, and (4) the agency improperly relied on the offerors' past performance references in assessing the relevance of the past performance, and did not reasonably consider information in the offeror's proposals. For the reasons discussed below, we conclude that the first argument has merit and sustain the protest. Although we do not discuss the other issues in full, we have reviewed them and find that none of them provides a basis to sustain the protest.⁷

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status until roughly August 31, 2015."). We see no basis from the record to draw this conclusion. Because we recommend that the agency perform a new OCI analysis, we recommend that the agency fully explore the issue, and not limit its review based on assumptions or suppositions about the relationships or exchanges between the potentially conflicted parties at any point in time.

⁷ For example, AT&T argues that the Air Force unreasonably concluded that MacAulay-Brown's performance of its eighth past performance effort, for its proposed subcontractor [DELETED], was recent because it was an "ongoing" effort. The RFP provided that only recent efforts "would be evaluated, and stated that "[t]o be recent, the effort must be ongoing or must have been performed during the past three years from the date of issuance of this solicitation," and further stated that "[o]n-going actions will be considered as recent so long as the effort has been performed for at least six months." RFP § M at 4-5. The protester argues that the definition of "ongoing" meant that the effort must have been performed for at least 6 months from the issuance of the solicitation. Protester's Supp. Comments (June 22, 2016) at 21-22. The agency contends that the RFP provided that an ongoing effort was one that "has been performed for at least six months" and that the solicitation language pegging the start time to the issuance of the solicitation does not relate to the definition of ongoing. Supp. MOL (June 15, 2016) at 16. For this reason, the agency stated that the agency assessed whether an effort was ongoing based on whether the effort had been performed within 6 months of the submission of an offeror's proposal, rather than the issuance of the solicitation. *Id.* We agree with the agency. The solicitation states that a relevant effort had to be "ongoing," *i.e.*, been performed for 6 months, or "been performed during the past three years from the date of issuance of this solicitation." RFP§ M at 4-5. Although the definition of "ongoing" did not specify a start date, we think the agency's

(continued...)

As a general matter, the evaluation of an offeror's past performance is within the discretion of the contracting agency; our Office will, however, question an agency's evaluation of past performance where it is unreasonable or undocumented. Solers, Inc., B-404032.3, B-404032.4, Apr. 6, 2011, 2011 CPD ¶ 83 at 8. Although an agency is not required to retain every document generated during its evaluation of proposals, the agency's evaluation must be sufficiently documented to allow our Office to review the merits of a protest. Apptis, Inc., B-299457 et al., May 23, 2007, 2008 CPD ¶ 49 at 10.

The RFP here stated that the Air Force would evaluate the "degree of confidence the Government has in an offeror's ability to perform the required service to meet users' needs based on a demonstrated record of performance." RFP § M at 4. The evaluation of offerors' past performance references was to consider recency, relevance, and quality. Id.

For recency, the RFP provided as follows:

An assessment of the past performance information will be made to determine if it is recent. To be recent, the effort must be ongoing or must have been performed during the past three years from the date of issuance of this solicitation. On-going actions will be considered as recent so long as the effort has been performed for at least six months. Past performance information that fails this condition will not be evaluated.

Id. at 4-5.

For relevance, the RFP provided as follows:

A relevancy determination will be made based upon the definitions below. In determining relevancy for each mission area identified, consideration will be given to the effort, or portion of the effort, being proposed by the offeror, teaming partner, or subcontractor whose contract is being reviewed and evaluated. The Government is not bound by the offeror's opinion of relevancy.

(a) The degrees of relevancy for each past performance reference will be evaluated IAW with definitions in Attachment 12- Relevancy matrix.

(...continued)

interpretation of that term as dating to the time of proposal submission is consistent with the word ongoing, i.e., current or continuing.

(b) PPI [past performance information] references will be evaluated individually for relevancy in each mission area.

Id. at 5.

The relevancy matrix identified six mission areas where offerors were required to demonstrate experience: (1) cyber development and cyber support, (2) cyber weapons, tactics, intelligence and information operations support (3) requirements development and special technical operations planning development support, (4) operational test and evaluation support, (5) instructional systems development and infrastructure/network management, and (6) cyber operations. RFP, attach. 12, Past Performance Relevancy Matrix, at 1-3. For each mission area, the matrix identified a number of areas of experience (identified as criteria A, B, C, etc.), and specified which areas of experience were necessary to receive one of the following ratings for a past performance reference: relevant, somewhat relevant, or not relevant. Id.

For quality, the RFP provided as follows:

(a) The Government will consider the performance quality of recent, relevant efforts. The performance quality of the work performed will be assessed for the recent and relevant PPI evaluated above. The Government will assign one of the following performance quality ratings to each recent and relevant referenced contracts provided as PPI: [exceptional, very good, satisfactory, marginal, unsatisfactory, not applicable].

RFP at 5-6.

The Air Force was to assign an overall performance confidence assessment (PCA) based on an evaluation of the relevancy and quality of recent ongoing or prior references, as follows:

- i. As a result of the relevancy and quality assessments of the recent contracts evaluated, offerors will receive an integrated performance confidence assessment rating. Offerors without a record of recent/relevant past performance or for whom PPI is not available or is so sparse that no meaningful confidence assessment rating can be reasonably assigned will not be evaluated favorably or unfavorably on past performance and, as a result will receive an "Unknown Confidence" rating for the Past Performance factor.
- ii. More recent and relevant performance may have a greater impact on the Performance Confidence Assessment than less recent or

relevant effort. Likewise, a more relevant past performance record may receive a higher confidence rating and be considered more favorably than a less relevant record of favorable performance.

Id. at 6.

The Air Force's past performance evaluation team (PPET) evaluated eight past performance references for MacAulay-Brown. AR, Tab 123, Final PPET Report, at 36.⁸ The agency found that as a team, MacAulay-Brown demonstrated relevant past performance under all six mission areas and merited an overall rating of substantial confidence. Id. at 81. The PPET's final briefing to the SSA showed the same information regarding MacAulay-Brown's past performance that was contained in the PPET report. AR, Tab 32, Final SSA Briefing, at 90-92.

The SSA's discussion of MacAulay-Brown's past performance stated that the awardee demonstrated experience in all six mission areas, and found that the awardee's past performance merited a substantial confidence rating, as follows:

[MacAulay-Brown] and its teaming partners demonstrated relevant past performance experience in all six of the areas of the relevancy matrix. MacAulay-Brown Inc. demonstrated a slightly less relevant record of past performance when considering the level of effort its team is proposed to perform and the relevancy and quality assessed on the questionnaires obtained for each Past Performance Information (PPI) reference (Prime & teaming partner). Additionally, the quality of performance of [MacAulay-Brown] and its teaming partners, as assessed by the questionnaires received by the Government, was positive ranging from Satisfactory to Exceptional.

AR, Tab 129, SSDD at 4. See also id. at 6 ("Both offerors demonstrated Relevant performance as a prime contractor across all six areas.").

AT&T argues that the final PPET Report contained errors in the assessment of three of MacAulay-Brown's eight past performance references, with regard to the assignment of relevance ratings under the mission areas. The protester contends that the underlying evaluations were inconsistent with the ratings assigned for the following references: (1) reference 1.7, mission area No. 6 (cyber operations), (2) reference 2, mission area No. 3 (requirements development and special technical operations planning development support), and (3) reference 1.4, mission

⁸ Past performance references for MacAulay-Brown were designated as 1.1-1.9, and references for AT&T were designated as 2.1-2.8. AR, Tab 123, Final PPET Report, at 7, 36.

area No. 4 (operational test and evaluation support). For the reasons discussed below, we agree with the agency that the first reference does not reflect an error, but agree with the protester that the second and third references reflect prejudicial errors in the agency's evaluation.

With regard to MacAulay-Brown past performance reference 1.7, the Air Force assigned a relevant rating under mission area 6. AR, Tab 123, Final PPET Report, at 70. AT&T argues that the agency's assignment of a relevant rating was unreasonable because the awardee's past performance reference gave a negative response to one of the questions regarding experience criterion C (silent SMS capabilities).

The Air Force argues that the questions and responses for experience criterion C reflected a formatting error regarding the two questions asked for this criterion. Supp. MOL (June 15, 2016) at 20; AR, Tab 153, Decl. of PPET Advisor (June 13, 2016), at 20. In this regard, the two questions sought yes or no answers, but were not formatted for such responses. AR, Tab 153, Decl. of PPET Advisor (June 13, 2016), at 19-20. The first question requested a recommendation for the offeror as to its capabilities regarding silent SMS capabilities: "Provide recommendations for employing Silent SMS capabilities in operational environment." AR, Tab 118, MacAulay-Brown Past Performance Questionnaire, at 70. The respondent answered "yes" to this question. Id. The second question asked a seemingly more specific question, but was not formatted for a yes or no response: "How would you determine from your recommendations the best [courses of action] for a capability." Id. The respondent answered "no" to this question. Id.

The Air Force argues that the "yes" response to the first question clearly reflected the references' view that the awardee had relevant experience, and that the "no" response to the second question was properly ignored because that question was not formatted in a manner that provided a basis to interpret the meaning of a yes or no answer. Supp. MOL (June 15, 2016) at 20; AR, Tab 153, Decl. of PPET Advisor (June 13, 2016), at 19-20. For this reason, the Air Force found that reference 1.7 satisfied the requirement for a Relevant rating under Mission Area 6. AR, Tab 123, Final PPET Report, at 70.

Although the record here reflects a "no" answer regarding the relevance of MacAulay-Brown's work under the second question for criterion C, we think the agency reasonably interpreted the more general answer of "yes" under the first question as reflecting an overall level of relevance for the awardee's performance record. We therefore find no basis to conclude that the agency erred in assigning a rating of relevant for this reference.

Next, with regard to MacAulay-Brown past performance references 1.2 and 1.4, the Air Force concedes that the PPET report erroneously assigned relevant ratings for these references. Supp. MOL (June 15, 2016) at 20-21. The agency contends,

however, that these errors were minor and could not have affected overall rating for awardee. Id. We do not agree with the agency.

For MacAulay-Brown reference 2, the Air Force agrees with AT&T that the awardee's performance record for mission area No. 3 should have merited a somewhat relevant rating, rather than a relevant rating because the reference did not reflect experience under all four criteria (A-D). Supp. MOL (June 15, 2016) at 21; AR, Tab 153, Decl. of PPET Advisor (June 13, 2016), at 18 ("For (MacAulay Brown) PPI 1.2, page 61 of the report correctly noted that [MacAulay-Brown] did not demonstrate experience in "up-channeling an Execute Order (EXORD) to higher headquarters to authorize mission execution"). The agency argues, however, that PPET members were aware of the discrepancy and that it did not affect the overall assignment of a substantial confidence rating for MacAulay-Brown's past performance. Supp. MOL (June 15, 2016) at 21.

For MacAulay-Brown reference 1.4, the Air Force also agrees that the awardee's performance record for mission area No. 4 should have merited a somewhat relevant rating, rather than a relevant rating because the reference did not reflect experience under all five criteria (A-E). Supp. MOL (June 15, 2016) at 21; AR, Tab 153, Decl. of PPET Advisor (June 13, 2016), at 14 ("For [MacAulay-Brown] PPI 1.4, page 43 of the report correctly noted that, for PPI 1.4, [MacAulay-Brown] did not demonstrate experience in "network/system administration of multi-domain classified networks"). Here, the agency contends that the error was non-prejudicial because it was "cumulative" of relevant ratings for mission area No. 4 in other past performance references. Supp. MOL (June 15, 2016) at 21.

Thus, notwithstanding the erroneous ratings assigned to MacAulay-Brown's past performance under these two references, the Air Force contends that the PPET members were aware of the underlying record and therefore would not have changed the overall assignment of a substantial confidence rating to MacAulay Brown under the past performance factor. Supp. MOL (June 15, 2016) at 21; AR, Tab 153, Decl. of PPET Advisor (June 13, 2016), at 14 (PPET members were "aware of the correct information and was confident of the offeror's past performance experience within the Area."); Tab 154, Decl. of PPET Chair (June 13, 2016) at 11-12, n.1, n.2 (PPET members were aware of the "errors" regarding evaluation of awardee's past performance, but emphasizing that the awardee demonstrated "a degree of relevancy" for all six mission areas). In this regard, the agency contends that, "at some point in the evaluation process both the PPET Chair and the SSA would have been aware that [MacAulay-Brown] merited a rating of Somewhat Relevant for reference 2 under Mission Area 3 and for reference 4 under Mission Area 4." Supp. MOL (June 15, 2016) at 21. The agency concludes that these errors were not prejudicial for the following reason:

In any event, the errors would not have had any impact on the award decision, because both the PPET Chair and the SSA have confirmed

that the rating of Substantial Confidence remains appropriate for [MacAulay-Brown) even after a downgrading to Somewhat Relevant for [MacAulay-Brown]'s Relevance ratings for reference 2 under Mission Area 3 and for reference 4 under Mission Area 4. See AR, Tab 1 54, [PPET Chair] Declaration, at 11, n.1-2; AR, Tab 155, [SSA] Declaration, ¶¶ 10, 11 and 12, at 5-6.

Id. at 22.

In reviewing an agency's evaluation, we do not limit our consideration to contemporaneously-documented evidence, but instead consider all the information provided, including the parties' arguments, explanations concerning the contemporaneous record. Remington Arms Co., Inc., B-297374, B-297374.2, Jan. 12, 2006, 2006 CPD ¶ 32 at 10. While we generally give little or no weight to reevaluations and judgments prepared in the heat of the adversarial process, see Boeing Sikorsky Aircraft Support, B-277263.2, 8-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15, post-protest explanations that provide a detailed rationale for contemporaneous conclusions, and simply fill in previously unrecorded details, will generally be considered in our review of reasonableness of evaluation decisions--provided those explanations are credible and consistent with the contemporaneous record. NWT, Inc.; PharmChem Labs., Inc., B-280988, B-280988.2, Dec. 17, 1998, 98-2 CPD ¶ 158 at 16.

Here, even if the record supported the declarations from the PPET advisor and PPET chair that the evaluators were aware of the errors and still would have assigned a substantial confidence rating had those errors been corrected, the record does not show that the SSA was aware of the correct relevance ratings or that he would have made the same conclusion. In response to the protest, the SSA states that he did not rely on the ratings alone, but also looked behind the ratings and noted differences in both relevance and quality between the offerors." AR, Tab 155, Decl. of SSA (June 13, 2016), at 5. The SSA, however, does not directly address the "discrepancies" cited in the protest and the agency's response. See id. at 4-6. Moreover, despite the Air Force's claim in its supplemental memorandum of law that the PPET members and SSA would have assigned the same substantial confidence rating for MacAulay-Brown, had the evaluation record reflected the correct relevance ratings, the SSA's declaration does not make this representation. See Supp. MOL (June 15, 2016) at 21-22; AR, Tab 155, Decl. of SSA (June 13, 2016), at 4-6.

Where agencies argue that an evaluation error had no effect on the overall evaluation or award result, we look to the contemporaneous evaluation to assess the potential impact. In an analogous situation, we rejected an agency's contention that, although it improperly provided the awardee with an unequal opportunity to revise its proposal, this error did not affect the evaluation because the agency did not consider the awardee's responses; we found that the agency's position was not

supported because the evaluation record clearly referenced statements that were provided in the awardee's responses. See Raytheon Co., B-404998, July 25, 2011, 2011 CPD ¶ 232 at 11-15. Because the contemporaneous record here clearly states that the SSA found that MacAulay-Brown received relevant ratings under all six mission areas, and because nothing in the record provides a basis to conclude that the SSA understood otherwise, we rely on the SSDD's statement that MacAulay-Brown's overall past performance rating was based on relevant ratings under all six mission areas. See id. at 15.

We further conclude that this error prejudiced AT&T, as the errors acknowledged by the Air Force mean that the awardee had no relevant references for mission area No. 3, and the overall number of relevant references for the awardee was reduced from 12 to 10. AR, Tab 123, Final PPET Report, at 76. Our Office has recognized that agencies' use of ratings in the evaluation of offerors' proposals, be they numerical or adjectival, are but guides for intelligent decision-making; they do not mandate automatic selection of a particular proposal. See Research & Dev. Solutions, Inc., B-410581, B-410581.2, Jan. 14, 2015, 2015 CPD ¶ 38 at 10. Nonetheless, we cannot conclude, based on the record here, what the evaluation of the awardee's past performance would have been, had the conceded errors been considered. For these reasons, we sustain this protest ground.

Cost/Price Evaluation

Next, AT&T argues that the Air Force unreasonably evaluated the realism of MacAulay Brown's proposed cost/price. We have reviewed all of the protester's arguments with respect to the agency's evaluation of the realism of MacAulay-Brown's proposed cost/price and find no basis to sustain the protest. We address a representative example regarding the evaluation of MacAulay-Brown's proposed compensation plan.

As discussed above, the RFP required offerors to propose a professional compensation plan, per the requirements of FAR clause 52.222-46. The solicitation's evaluation criteria advised that "[t]his requirement is met when the offeror's price proposal provides a total compensation plan setting forth salaries and fringe benefits proposed for the professional employees who will work under the contract IAW FAR 52.222-46 - Evaluation of Compensation for Professional Employees (Feb 1993)." RFP § M at 9. The RFP also provided that "[o]fferor shall provide supporting data and source information for compensation rates as a part of its cost/price proposal." RFP L at 17.

As relevant here, FAR clause 52.222-46 provides that the agency will evaluate an offeror's proposed compensation plan "to assure that it reflects a sound management approach and understanding of the contract requirements," and further states that the evaluation "will include an assessment of the offeror's ability to provide uninterrupted high-quality work." FAR clause 52.222-46(a). The clause

also states that an offeror's compensation plan "will be considered in terms of its impact upon recruitment and retention, its realism, and its consistency with a total plan for compensation." Id. The clause cautions offerors that "lowered compensation for essentially the same professional work may indicate lack of sound management judgment and lack of understanding of the requirement." Id. As our Office has held, an agency's cost realism analysis requires the exercise of informed judgment, and we review an agency's judgment in this area to see that the cost realism analysis was reasonably based. Information Ventures, Inc., B-297276.2 et al., Mar. 1, 2006, 2006 CPD ¶ 45 at 7.

AT&T primarily argues that the agency's evaluation of MacAulay-Brown's proposed compensation was flawed because it did not address what the protester contends were significant differences in the offerors' proposed fringe benefit rates, as well as specific differences in the offerors' proposed fringe benefits which contributed to the difference in the rates, including the protester's provision of bonuses, and discounts on long-distance calls, cell phones, and cable television. Protester's Comments (June 7, 2016) at 11-12. The protester argues that MacAulay-Brown's proposed professional compensation plan should have been found unrealistic, and therefore rejected as unacceptable. Id. at 13.

The Air Force's cost/price evaluation team reviewed each offeror's cost/price proposal for reasonableness, realism, balance, and also received rate verification from the Defense Contract Audit Agency. COS (May 16, 2016) at 13-14, 31. For AT&T, the agency concluded that the protester's proposed compensation plan was realistic and acceptable. The agency noted that its proposed fringe benefit rate of [DELETED] percent was higher than national average of 31.5 percent. AR, Tab 126, Pre-FPR Cost/Price Evaluation Report, at 10. The agency also noted benefits such as short term and long-term disability, life insurance, free long-distance calling plans, and discounts on cell phone and television services. Id.

For MacAulay-Brown, the agency also concluded that its proposed compensation plan was realistic and acceptable. The agency noted that the proposed fringe rate was lower than the national average but was nonetheless realistic, overall.⁹ The agency's findings were as follows:

⁹ The Air Force's evaluation of MacAulay-Brown's proposed compensation plan also noted that certain of the awardee's proposed labor rates were lower than the protester's. AR, Tab 126, Pre-FPR Cost/Price Evaluation, at 30. Because the awardee proposed to retain incumbent personnel where possible, the agency concluded that there was some risk regarding the awardee's proposed labor rates. Id. at 27-28. The agency therefore made adjustments to the awardee's proposed direct labor rates where there was a variance of greater than 2 percent from Bureau of Labor Statistics data or the incumbent rates, whichever was lower. Id.

Overall, the offeror's fringe benefit of [DELETED]% was slightly lower than the national average of 31.5% ([Bureau of Labor Statistics], September 2015). An evaluation of the offeror's completed Compensation Worksheet, to include base rates, fringe benefit, and health care, retirement, etc. demonstrated a sound management approach and an understanding of the contract requirements. In addition, when compared to the national average (31.5%), the offeror appeared realistic. The offeror's percentage of employee contribution to its health benefit ([DELETED]%) was lower than the national average of 8.1%. The paid time off and holiday leave afforded employees is commensurate with the national average. And, the offeror matches [DELETED]% in employee contributions to a 401 K Retirement Plan. Additionally, the offeror's professional compensation package includes short term and long-term disability, continuing education reimbursement, and life insurance.

Id. at 29-30.

The agency's proposal analysis report (PAR) reiterated the findings from the pre-FPR cost/price evaluation report regarding each offeror's professional compensation plan, and compared the plans. AR, Tab 127, PAR, at 116-17. The agency noted the difference between the plans, particularly the higher rates proposed by AT&T. Nonetheless, the agency concluded that both offerors' proposed plans were realistic. Id.

Based on the record here, we find no merit to AT&T's argument that the Air Force found MacAulay-Brown's proposed compensation plan unrealistic or otherwise unreasonable in a way that mandated rejection of the awardee's proposal. Although the protester argues that the awardee's proposed fringe benefits were not commensurate to the protester's, and that the awardee's overall fringe benefits rates were lower, the protester does not establish that the awardee's proposed compensation plan was unrealistic. The agency contends that overall compensation level, rather than the specifics of AT&T's fringe benefits to employees reflected a realistic rate. Supp. MOL (June 15, 2016) at 39. We conclude that the Air Force's evaluation was reasonable, to the extent that nothing in FAR clause 52.222-46 requires an agency to consider whether an offeror will provide the exact same fringe benefits as the incumbent. As long as the agency reasonably concludes that the overall compensation package is realistic, we see no requirement for the agency to match every element. Because the agency concluded that the specifics of MacAulay-Brown's compensation plan, including a fringe rate that was comparable to the national average, demonstrated that the plan was realistic and acceptable, we find no basis to sustain the protest. See Portfolio Mgmt. Solutions, LLC; Competitive Choice, Inc., B-408846, B-408846.4, Dec. 12, 2013, 2013 CPD ¶ 290 at 5 (evaluation under FAR clause 52.222-46 reasonable

where the agency reasonably evaluated the offeror's proposed compensation including proposed labor rates, fringe benefits).

Technical Factor Evaluation

Next, AT&T argues that the Air Force unreasonably evaluated the acceptability of MacAulay-Brown's proposal under the staffing and management approach subfactor of the technical acceptability factor. We find no basis to sustain the protest, and address a representative example below.

The RFP provided the following requirements for the staffing and management approach subfactor:

Subfactor 1: Staffing/management. This subfactor is met when the offeror presents a staffing and management approach for this effort that meets the following criteria:

- a. Acceptable position descriptions for each labor category and Wrangler Labor Matrix Chart (Attachment 15).
- b. An acceptable description of recruiting personnel, including employee accession, retention of qualified personnel, and ensuring they have and maintain the training, certifications, and security clearances necessary to perform the Performance Work Statement (PWS) requirements by the required date.
- c. An acceptable description ensuring continuity of services during personnel absence due to sickness, leave and vacancies from employment such that impact to the Government is minimal.
- d. An acceptable description of managing processes to ensure personnel maintain ability to operate existing and evolving network resources, topology, processes and procedures.
- e. An acceptable organization staffing chart includes an organization structure that demonstrates how the organization plans to manage individual [task orders (TOs)], coordinate between TOs, and manage subcontractor and teaming partners, including the delineation of tasks performed by other than the offeror (i.e. subcontractor and teaming partners).
- f. Small Business Utilization. . . .

RFP § M at 2-3.

AT&T argues the staffing/management subfactor required offerors' proposals to address in detail their approach to perform all areas of the PWS. See Supp. Protest (June 2, 2016) at 9. The protester contends that the awardee's proposal did not address every PWS requirement and often merely "parroted" or paraphrased certain requirements. Protester's Supp. Comments (June 22, 2016) at 76. As the Air Force notes, however, the RFP did not expressly state that offerors' proposals were required to address in detail how they would meet all PWS requirements; instead, as cited above, the RFP required offerors to address how their staffing and management approach would ensure the offeror would provide staff capable of performing the PWS. See RFP § M at 2. For this reason, we do not agree with the protester's characterization of the RFP as requiring offerors to provide detailed descriptions of how all PWS requirements would be met.

With regard to specific requirements, AT&T argues that MacAulay-Brown's proposal merely "parroted back" the requirements of the PWS. Protester's Supp. Comments (June 22, 2016) at 76. For example, the protester argues that with regard to the PWS 4 requirement for "reach-back capacity," PWS 4 ¶ 5.8.6, the awardee's proposal merely rephrased the language. Id. at 76 (citing AR, Tab 6.c.1, MacAulay-Brown Revised Technical Proposal, at 60).

The Air Force contends that MacAulay-Brown's proposal adequately addressed the requirements of staffing/management subfactor requirements by addressing their staffing and management plan and proposing appropriate personnel. Supp. MOL (June 22, 2016) at 8-9. With regard to reach-back capability, an Air Force technical advisor explained that the evaluators found that MacAulay-Brown's proposal demonstrated compliance with the requirement by stating that it would provide personnel their "intent to field employees with the required training and skills in order to meet PWS requirements." AR, Tab 157, Decl. of Technical Advisor (June 14, 2016), at 30. See also AR, Tab 156, Decl. of Technical Team Lead (June 6, 2016), at 5-9.

We find no basis to conclude that the Air Force's evaluation of the level of detail provided in MacAulay-Brown's proposal was unreasonable, or that the agency unreasonably found the awardee's proposal acceptable overall under the technical acceptability factor. The protester's disagreement with the agency's judgment on this matter does not provide a basis to sustain the protest. See VT Griffin Servs., Inc., supra.

Meaningful Discussions

Next, AT&T argues that the Air Force failed to provide it an opportunity for meaningful discussions because the agency did not advise the protester during discussions that its proposed cost/price was higher than MacAulay-Brown's. Supp. Protest (Apr. 25, 2016) at 2. We find no merit to this argument.

When an agency engages in discussions with an offeror, the discussions must be “meaningful,” that is, sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision. FAR § 15.306(d)(3); Southeastern Kidney Council, B-412538, Mar. 17, 2016, 2016 CPD ¶ 90 at 4. Although discussions must address deficiencies and significant weaknesses identified in proposals, the precise content of discussions is largely a matter of the contracting officer’s judgment. Id. Agencies may not mislead an offeror--through the framing of a discussion question or a response to a question--into responding in a manner that does not address the agency’s concerns. Multimax, Inc. et al., B-298249.6 et al., Oct. 24, 2006, 2006 CPD ¶ 165 at 12.

Where an offeror’s price or cost is high in comparison to competitors’ prices or the government estimate, the agency may, but is not required to, address the matter during discussions. IAP World Servs., Inc., B-297084, Nov. 1, 2005, 2005 CPD ¶ 199 at 4. That is, there is no requirement that an agency inform an offeror during discussions that its price or cost may be too high where the offeror’s price or cost is not considered excessive or unreasonable. Southeastern Kidney Council, supra. Thus, if an offeror’s price or cost is not so high as to be unreasonable and unacceptable for contract award, the agency reasonably may conduct discussions without advising the offeror that its price or cost is not competitive. IAP World Servs., Inc., supra.

AT&T, in essence, argues that it was misled during discussions into not lowering its proposed cost/price in a manner that would be competitive with MacAulay-Brown’s proposed cost/price. Here, however, the Air Force did not consider AT&T’s cost/price to be excessive or otherwise unreasonable. As such, the agency was under no obligation to inform the protester that its cost/price was high in comparison to the prices proposed by MacAulay-Brown. Southeastern Kidney Council, supra; IAP World Services, Inc., supra. Moreover, the protester does not identify anything in the agency’s discussions which affirmatively misled the protester regarding its proposed price. We therefore find no basis to sustain this protest ground.

Tradeoff Decision

Finally, AT&T argues that the award decision was flawed because the Air Force’s tradeoff decision relied solely on the ratings assigned to each offeror’s past performance and thereby failed to look behind those ratings in a way that provided for a meaningful tradeoff between MacAulay-Brown’s lower proposed cost/price and what the agency recognized was AT&T’s more relevant past performance record. The agency contends that the RFP did not permit a tradeoff, and that the SSA did not rely on a tradeoff for the award decision. For the reasons discussed below, we conclude that, even under the agency’s interpretation of the solicitation’s award criteria, the protester was prejudiced in light of our conclusions regarding the evaluation of MacAulay-Brown’s past performance.

As discussed above, section M of the RFP stated that the agency “reserves the right to award a contract to other than the lowest priced offer if the lowest priced offeror is judged to have a performance confidence assessment of ‘Satisfactory Confidence’ or lower.” RFP § M at 1 (emphasis added). Section M of the RFP also stated, however, that “[t]rade-off procedures will be utilized with non-cost factors and cost/price (past performance and cost/price) approximately equal and technical subfactors of technical approach, staffing and transition being equal and evaluated on a pass/fail basis.” Id. at 2 (emphasis added).

The Air Force argues that it interpreted the solicitation as providing for award to the offeror whose proposal had the lowest proposed cost/price, provided it was technically acceptable and received a past performance confidence rating of “substantial confidence.” Supp. MOL (June 15, 2016) at 22-23. AT&T does not directly challenge this interpretation, but argues that the agency in fact made a tradeoff, and that the tradeoff was unreasonable.

We think that the two provisions cited above can be read in harmony, in that the later provision (“[t]rade-off procedures will be utilized”) refers to the procedures that would be used in the event a tradeoff is made by the agency, consistent with the terms of the former provision (concerning the past performance confidence rating for proposal with the lowest cost/price). See RFP § M at 1-2. The record, however, is complicated by the SSA’s apparent statement in the SSDD that he did, in fact, make a tradeoff: “In considering a trade-off under the criteria in the RFP, I find that the price premium of \$8,785,548.84 from the proposed prices (or 17.4% more from the total evaluated prices) for AT&T Government Solutions, Inc.’s same performance confidence rating of “Substantial Confidence” is of no benefit to the Government.” AR, Tab 129, SSDD, at 7.

In response to the protest, the SSA submitted a declaration in which he explained as follows:

While my SSDD discussed whether a trade-off between price and past performance would be warranted (AR, Tab 129 at 6,7), I also considered the RFP restriction permitting trade-off only where “the lowest priced offeror is judged to have a performance confidence assessment of ‘Satisfactory Confidence’ or lower” (AR, Tab 4.B.11 at 1). For all of these reasons, I determined that [MacAulay-Brown]’s proposal represented the best overall value to the Government and directed award to [MacAulay-Brown] (AR, Tab 129 at 7).

AR, Tab 155, Decl. of SSA (June 13, 2016), at 5-6.

To the extent the Air Force interprets the RFP as permitting tradeoffs only where the lowest-priced proposal has a past performance rating of satisfactory confidence or

lower, we recommend that the agency make this interpretation clear in a new award decision.

In any event, regardless of the interpretation of the award criteria used by the Air Force, we conclude that AT&T was prejudiced by the agency's award decision. In this regard, as discussed above, we conclude that the record does not support the agency's assignment of relevance ratings to MacAulay-Brown's past performance references. Because a revised evaluation could affect MacAulay-Brown's overall past performance rating, we conclude that AT&T was prejudiced because a lower rating could have affected the award decision under the agency's interpretation set forth above.

CONCLUSION AND RECOMMENDATION

For the reasons discussed above, we conclude that the Air Force's award to MacAulay-Brown was unreasonable. First, the agency found that there was a potential OCI arising from MacAulay-Brown's relationship with [DELETED], but did not reasonably conclude that this OCI had been mitigated or avoided. Second, although the agency concedes that there were errors in the assignment of the ratings regarding the relevance of MacAulay-Brown's past performance references, neither the record nor the agency's response to the protest demonstrates that these errors were not-prejudicial, *i.e.*, that they could not have affected the assignment of an overall substantial confidence rating for the awardee. Because there were only two offerors for this procurement, we conclude that AT&T was prejudiced by these errors for two reasons: (1) a rejection of MacAulay-Brown's proposal under a revised OCI analysis could leave AT&T as the only eligible offeror, and (2) a revised past performance evaluation that results in a lower rating of MacAulay-Brown would require the agency to make a new award decision, potentially involving a different tradeoff between the offerors' cost/price and past performance ratings.

We recommend that the Air Force conduct a new evaluation of the potential unequal access to information OCI with regard to MacAulay-Brown and [DELETED], and also recommend that the agency reevaluate the offerors' past performance consistent with the discussion above. We further recommend that upon completion of these new evaluations, the agency make a new award decision. Finally, we recommend that the agency reimburse AT&T the reasonable costs of filing and pursuing the protest, including attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1). AT&T should submit its certified claim for costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days of this decision.

The protest is sustained.

Susan A. Poling
General Counsel