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**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: QinetiQ North America, Inc.

File: B-405163.2; B-405163.3; B-405163.4; B-405163.5

Date: January 25, 2012

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Richard J. Conway, Esq., Michael J. Slattery, Esq., and Jade C. Totman, Esq., Dickstein Shapiro LLP, for Qbase-McNeil Integrated Solutions, RLLP, the intervenor.
Brett T. Egusa, Esq., and John T. Kirsch, Esq., Department of Homeland Security, for the agency.
Pedro E. Briones, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest based on an alleged violation of the Procurement Integrity Act is denied, where, consistent with Federal Acquisition Regulation requirements, the agency investigated the alleged disclosure of protester's employees' resumes to the awardee by a protester's former employee (who the awardee proposed and hired as a key contract personnel) and found no evidence of the alleged disclosure or any impact on the procurement and where protester has not shown that it was competitively disadvantaged.
2. Protest of an agency's technical and price evaluations is denied where the record shows that the agency reasonably evaluated proposals consistent with the evaluation criteria, extensively documenting qualitative differences between the protester's and awardee's proposals.
3. Protest that an agency failed to conduct meaningful discussions and misled the protester is denied, where the agency informed the protester in numerous rounds of discussions of its evaluated deficiencies and weaknesses and did not mislead the protester.

DECISION

QinetiQ North America, Inc., of McLean, Virginia, protests the award of a contract to Qbase-McNeil Integrated Solutions, RLLP, (QMIS) of Reston, Virginia, under request for proposals (RFP) No. HSCETC-11-R-00002 issued by the Department of Homeland Security, Immigration and Customs Enforcement (ICE), for information technology field operations (ITFO) support services.

We deny the protest.

BACKGROUND

The RFP, issued under the commercial item acquisition procedures of Federal Acquisition Regulation (FAR) part 12, provided for the award of a fixed-price, indefinite-delivery/indefinite-quantity contract for a base year (including a 2-month transition period) and 5 option years to support ICE's ITFO Branch. See RFP, Instructions, at 2-3; Evaluation, at 1. The RFP also provided that concurrent with contract award the agency would issue a fixed-price task order for program management and information technology support services for the base year.¹ RFP, Instructions, at 2.

A detailed statement of work (SOW) was provided that described dozens of information technology tasks and support services the contractor would perform for more than 26,000 ICE users worldwide. See SOW at 1. In this respect, the contractor will provide ITFO staff to over 900 ICE field offices in the continental United States and in 46 countries. See id. at 26; RFP, append. A, Field Operations Map; append. B, ITFO Sites, at 1-13. Significantly, the contractor must provide information technology support during emergencies, natural disasters, and law enforcement or special operations, as well as provide IT support to mission-critical and very important personnel (VIP), and, when necessary, to other DHS, federal, state, and local agencies. See SOW at 31-33, 36. The contractor functions as part of the agency's first responder team and is responsible for continuous network operation. Contracting Officer's (CO) Statement at 1. Because the contractor is required to deploy additional ITFO staff in the wake of an emergency, it also must establish surge resources and staffing procedures in that regard to ensure that the contractor has capacity to provide additional staffing and resources on short notice.² See id. at 16-17; see also RFP, Attach. 1, Special Contract Requirements, at 19-21

¹ Offerors were advised that future orders would be issued on a fixed-price, time and materials, and/or labor hour basis. RFP, Instructions, at 2; Attach. 13, Task Order Schedule; Attach. 14, Task Order RFP.

² The contractor is also required to assist other law enforcement agencies with tasks such as accessing ICE networks and computer forensics. See CO's Statement at 1.

(Continued Performance during Support of Crisis Situations, Contingency, or Exercise).

As amended, the RFP provided for award on a best value basis, considering the following factors: management approach, technical approach, past performance, task order, and price.³ See RFP, Evaluation, at 1-2. Offerors were informed that the non-price factors were equal in weight, and, when combined, were significantly more important than price. Id. The RFP provided for adjectival and color ratings for the evaluation of proposals under the management approach, technical approach, and task order factors.⁴ Id. at 3-4.

Under the management approach factor, the RFP provided for the evaluation of offerors' proposed approaches to successful contract execution. Offerors were informed that this evaluation would include assessing the offeror's ability to provide management functions at multiple locations worldwide concurrently and to support increasing workload and staffing in response to emergency or technically challenging assignments. In addition, the RFP provided for assessing the offeror's organizational structure, operational control, communication, and ability to manage and supervise an integrated team. See RFP, Evaluation, at 5. Offerors were instructed to submit, among other things, a detailed program management plan, teaming/subcontracting management plan, risk management plan, small business subcontracting plan, and commitment letters and resumes for proposed key personnel.⁵ See id. at 5-9.

³ Subfactors were identified under the management approach and technical approach factors.

⁴ A blue/exceptional rating reflects a proposal that shows an exceptionally thorough and comprehensive understanding of the requirements; that greatly exceeds minimum requirements; that has significant strengths, exceptional features, or innovations; and that has no weaknesses or deficiencies. A purple/excellent rating reflects a proposal that shows a thorough understanding of the requirement; that exceeds requirements; that has significant strengths and/or strengths; and that any weaknesses are minor and are offset by strengths. A green/acceptable rating reflects a proposal that shows an adequate understanding of the requirement; that meets requirements; that has few, if any, exceptional features; and that has weaknesses that are not offset by strengths. A red/unacceptable rating reflects a proposal that shows a lack of understanding of the requirement and that has numerous weaknesses, significant weaknesses, and/or deficiencies. RFP, Evaluation, at 3-4.

⁵ The RFP required offerors to propose a program manager and deputy program manager, as key personnel, and specified experience and education requirements for these two positions. See RFP, Instructions, at 8; SOW at 28, 37. Offerors could also designate other key personnel positions. SOW at 37.

As pertinent here, the program management plans were required to describe the offeror's plans, policies, and procedures for performing the requirements, as well as the offeror's principal program support office, and provide an organizational and key personnel chart in that regard. See id. at 8. The teaming/subcontracting management plans were required to identify all proposed team partners and subcontractors, clearly identifying their respective percentages of overall effort, including workload distributions at the task level, and address the offeror's approach to maintaining an integrated, seamless ITFO team. See id. The risk management plans were required to describe the offeror's approach to managing ITFO-specific risks and identify risk mitigation planning strategies.⁶ See id.

Under the technical approach factor, the RFP provided for the evaluation of offerors' technical capability. Offerors were informed that the agency would evaluate, among other things, the logic of the offeror's staffing plan; ability to maintain continuity of operations; and the extent to which the offeror's quality control plan provided appropriate contractor oversight, performance measures, and corrective actions. Id. Moreover, the RFP provided that the agency would assess the offeror's transition plan to ensure that it proposed a logical methodology for deploying and adequately training contractor personnel, obtaining their security clearances, and providing an orderly transition from the incumbent within 60 days of contract award without degradation of services.⁷ See RFP, Evaluation, at 6. Offerors were instructed to submit separate plans for overall contract management and operations; transition; communications; emergency readiness; quality control; security; training; staffing; and records management and reporting. RFP, Instructions, at 9-10.

Under the past performance factor, RFP provided for the evaluation of offerors' past performance to assess the degree of confidence in the offeror's ability to perform the requirements, including budget and schedule requirements. Offerors were informed that the agency in its past performance evaluation would assign a performance confidence rating of exceptional, good, satisfactory, unsatisfactory, or

⁶ Although the protester disputes the agency's evaluation of virtually every plan proposed by QinetiQ and QMIS (including the plans' verb tenses, tables, text boxes, figures, diagrams, and "connecting lines" within diagrams), see, e.g., Protester's Comments & 2nd Supp. Protest at 13-36; Protester's Supp. Comments & 3rd Supp. Protest at 12-43, we only describe the requirements for some of the more salient plans.

⁷ Offerors' task order proposals were required to propose solutions for fulfilling the task order SOW that correlate to the various plans proposed in the offeror's technical and management approach proposals. RFP, Instructions, at 12. Task order proposals would be evaluated as provided under the evaluation factors for management approach and technical approach. RFP, Evaluation, at 6.

neutral/unknown confidence.⁸ See RFP, Evaluation, at 6-7. The RFP instructed offerors to provide information, including customer surveys, for at least three recent, relevant contracts.⁹ See RFP, Instructions, at 10-12. Offerors were advised that the agency might contact references or survey respondents to validate past performance information, or obtain information from other sources, including centralized past performance databases. See RFP, Instructions, at 10-11; Evaluation, at 7.

With respect to price, the RFP instructed offerors to propose, among other things, fixed hourly rates for specified labor categories, including separate rates for work performed at the offeror's site and at the government site.¹⁰ See RFP, Instructions, at 13-15; Attach. 4, Labor Categories. Offerors were informed that the agency would evaluate proposed prices for reasonableness and realism. See RFP, Evaluation, at 9. With respect to price realism, the RFP stated that the agency would assess whether the proposed prices indicated an offeror's clear understanding of, and a sound approach to satisfying, the requirements and whether the prices were consistent with the performance methods described in the offeror's overall proposal. Id. Offerors were informed that the agency could assess technical risk under management approach and technical approach factors with respect to unrealistically low offers. See id. The RFP also advised offerors that price proposals that were unreasonable or materially unbalanced for the base and option years could be rejected. Id.; see Instructions, at 13.

ICE received proposals from five offerors, including QinetiQ and QMIS.¹¹ CO's Statement at 4. ICE included QinetiQ's and QMIS's proposals in the competitive range and conducted two rounds of discussions with the two firms. Agency Report (AR), Tab 25, Competitive Range Determination, at 10; Tabs 26, 27, Discussions

⁸ As relevant here, a good confidence rating reflected past performance that was applicable in terms of content, scope, complexity, and at least good in quality; that indicated very little risk associated with contract performance; and that shows the offeror will meet or exceed requirements. See RFP, Evaluation, at 7.

⁹ The RFP defined relevant contracts as those that were similar in size, scope, complexity, dollar value, and contract type. Recent contracts were described as ongoing efforts or efforts performed during the past 3 years. See RFP, Instructions, at 10; Evaluation, at 8.

¹⁰ Offerors were also required to submit, as part of their price proposal, a separate task order price proposal that included fixed-prices for the labor categories. RFP, Instructions, at 12-13; Attach. 13, Task Order Schedule; Attach. 14, Task Order RFP, at 3.

¹¹ QinetiQ is a subcontractor under the incumbent contract.

with QinetiQ. The firms' revised proposals were evaluated by the agency's source selection evaluation board (SSEB) as follows:¹²

	QinetiQ	QMIS
Management approach	Red/unacceptable	Purple/excellent
Technical approach	Red/unacceptable	Purple/excellent
Task Order	Red/unacceptable	Purple/excellent
Past performance	Good confidence	Good confidence
Price	\$161,983,986	\$183,577,920
OVERALL RATING	Red/unacceptable	Purple/excellent

See CO's Statement at 4-6; AR, Tab 30, Initial Source Selection Decision, at 3-4, 16.

The source selection authority concluded that QMIS's higher-rated proposal reflected technical superiority that outweighed QinetiQ's lower proposed price. AR, Tab 30, Initial Source Selection Decision, at 16-17. Award was made to QMIS.

QinetiQ protested to our Office on June 6, challenging the agency's evaluation, conduct of discussions, and source selection decision. In response to the protest, ICE informed our Office that it would take corrective action by rescinding the contract award, reevaluating the firms' proposals, reopening limited discussions, requesting final proposal revisions, and making a new source selection decision. We dismissed QinetiQ's protest as academic on June 17.

Also on June 17, QinetiQ notified ICE of a possible Procurement Integrity Act (PIA) violation.¹³ AR, Tab 6, PIA Letter. QinetiQ stated that, shortly after receiving the agency's notice of award, the firm experienced "an inordinate number of sudden and unexpected resignations" of its incumbent ITFO employees, including its project manager and other individuals whom QinetiQ had proposed as key personnel in its proposal. Id. at 2. QinetiQ stated that an internal investigation by the firm revealed that its project manager had inappropriately emailed 23 resumes and a resume matrix to her personal email account approximately two weeks before contract award and her resignation from QinetiQ. See id. at 3-4. QinetiQ claimed that the resumes and resume matrix were extremely valuable, proprietary information used in preparation of QinetiQ's proposal, and alleged that the former project manager had provided the information to QMIS. See id. In this regard, QinetiQ alleged that someone at ICE who had knowledge of the source selection may have informed

¹² We do not list the various subfactor ratings in the interest of brevity.

¹³ We discuss below the procurement integrity provisions of the Office of Federal Procurement Policy Act, as amended, 41 U.S.C. §§ 2101-2107 (2011), known as the Procurement Integrity Act.

QinetiQ's former manager of the impending contract award, thereby permitting her to promptly quit QinetiQ after contract award and accept a position as QMIS's proposed ITFO deputy program manager. See id. Specifically, QinetiQ alleged that the former project manager may have learned the identity of the awardee from ICE's ITFO branch director during a recent trip to an ITFO field office. Id. at 4, n.1.

The Chief of ICE's Contracting Office (CCO) investigated the alleged PIA violation, sought legal counsel, requested (through ICE's legal counsel) additional information from QinetiQ, and interviewed ICE's ITFO branch director. See AR, Tab 9, PIA Decision, at 1-4; Tab 7, Statement of ITFO Branch Director. The ITFO branch director stated that, although she had met with QinetiQ's then-program manager in May, 2011, as part of a planned site visit under the incumbent contract, they had not discussed the procurement at any time during the site visit.¹⁴ See id. The CCO concluded that, although circumstantial evidence existed that the former QinetiQ employee had access to QinetiQ's proprietary information, there was no evidence that, prior to award, the former employee knowingly obtained the information except in execution of her duties for QinetiQ. AR, Tab 9, PIA Decision, at 2. The CCO also found that there was no conclusive evidence establishing that, prior to award, the former QinetiQ employee disclosed the proprietary information or that QMIS obtained that information. Id. The CCO concluded that the alleged incident did not have an impact on the procurement and that the procurement should proceed as planned. See id.

The agency conducted further discussions with QinetiQ and QMIS. See, e.g., AR, Tabs 28 and 29, Discussions with QinetiQ. The firms' revised proposals were evaluated as follows:

	QinetiQ	QMIS
Management approach	Green/acceptable	Blue/exceptional
Technical approach	Green/acceptable	Blue/exceptional
Task Order	Green/acceptable	Blue/exceptional
Past performance	Good confidence	Good confidence
Price	\$165,532,474	\$183,577,920
OVERALL RATING	Green/acceptable	Blue/exceptional

See AR, Tab 34, Final Source Selection Decision, at 3-8.

¹⁴ ICE's ITFO branch director participated in both rounds of proposal discussions with QinetiQ and QMIS prior to the agency taking corrective action. See AR, Tab 26, 1st QinetiQ Discussions, Minutes, at 1; 1st QMIS Discussions, Minutes, at 1; Tab 27, 2nd QinetiQ Discussions, Minutes, at 1; 2nd QMIS Discussions, Minutes, at 1.

QinetiQ's overall green/acceptable rating reflected the SSEB's judgment that, while QinetiQ's proposal demonstrated a technical understanding of the requirements, the proposal lacked an understanding of the operational and logistical management needed for successful contract execution. See AR, Tab 32, Business Clearance Memorandum, Oct. 6, 2011, at 13, 18. Specifically, the SSEB found that QinetiQ's proposed management approach, including its risk management plan, was not tailored to the agency's requirements but provided "extensive boilerplate descriptions . . . very little [of which] was directly related to ICE's specific needs." See id. at 14. The evaluators found that QinetiQ's risk management plan was to provide [DELETED], but proposed "no concrete plans for how, when, where, or who would manage performance risk," even though, according to the evaluators, QinetiQ should have been able to identify risks and demonstrate plans to mitigate and manage them based on QinetiQ's own experience as the incumbent subcontractor. See id. The SSEB assessed weaknesses in QinetiQ's proposal with regard to QinetiQ's plans for contract management and operations, quality control, and staffing, finding that these plans also lacked specificity and substance and reflected a reactive, instead of a strategic approach to the requirements. See id. at 15. The SSEB noted that QinetiQ did not explain how it would manage surge requirements, except to state generally that it would manage performance challenges when they arose by tapping into existing staff or subcontractor resources. See id. at 18. The SSEB concluded that, while QinetiQ's proposal satisfied basic requirements, QinetiQ provided very little detail to support its claims that it would have sufficient resources, processes, and procedures in place, especially for surge support. See id. at 17.

QMIS's overall blue/exceptional rating reflected the SSEB's judgment that QMIS had provided an exceptional proposal demonstrating a thorough understanding of the requirements and how to run the contract. See AR, Tab 33, Source Selection Recommendation, at 1-3. The evaluators determined that QMIS provided innovative solutions, including for personnel management, and they commented positively on QMIS's management, transition, communications, and staffing plans. See id. at 1-2. The SSEB noted that QMIS proposed to align its organizational structure to ITFO and that it would assign a QMIS counterpart to each ITFO regional and area manager. Id. at 1. The evaluators also noted that QMIS could move staff, including a proposed certified engineer, to even remote locations in the United States within 4 hours. See id. at 2. Moreover, the SSEB found that QMIS had qualified managers in place and core technicians for overseas locations and that it proposed a detailed approach for supplying primary and back-up teams in that regard, including a methodology for determining resources according to time zones. See id. The SSEB evaluators concluded that QMIS had proposed a clear, sound plan to provide rapid, effective surge responses and noted that the firm had received an excellence award in that regard from the Space and Naval Warfare Systems Command. See id. The SSEB recommended that award be made to QMIS. See id. at 3.

The CO evaluated the firms' proposed prices. CO's Statement at 20. Specifically, she analyzed the firms' proposed hourly labor rates and found that QMIS's and

QinetiQ's proposed prices were below the government's estimate, as well as below the incumbent contract cost.¹⁵ See AR, Tab 34, Final Source Selection Decision, at 4-5. She determined that the difference in QinetiQ's and QMIS's proposed prices was primarily because of the necessary costs QinetiQ would incur for transition, where QinetiQ, as an incumbent subcontractor, would incur less costs for transition. See id. at 12. The CO calculated that, after QMIS's initial transition costs, the difference between the two offerors was approximately \$[DELETED] million per year. Id. at 12. She also considered the agency's earlier price evaluations (that is, the price evaluations conducted prior to QinetiQ's earlier protest) and found that QMIS's and QinetiQ's revised prices were consistent with the respective offerors' earlier pricing methodologies.¹⁶ See id. at 5; CO's Officer's Supp. Statement at 18. The CO concluded that QMIS's proposed overall price and labor rates were reasonable and realistic. See AR, Tab 34, Final Source Selection Decision, at 8.

The CO, who was the source selection authority for this procurement, performed a new cost/tradeoff analysis. In this regard, she contrasted the firms' respective management and technical approaches to performing the contract work. Id. at 9-11. She found that although QinetiQ's proposal satisfied basic requirements, the protester failed to provide detail supporting or explaining its approach. In particular, with respect to the firms' management approaches, she found critical differences between the firms' approaches to surge support, which she characterized as a critical aspect of successful performance. Id. at 9. She found that QMIS provided a detailed plan for surge support that advanced strategic planning ability, whereas QinetiQ made broad statements that did not demonstrate how QinetiQ would satisfy the surge support requirements. Id. at 10. She concluded that the risk identified in QinetiQ's management approach imperiled the delivery of the contract services. Id. at 12. Although the CO recognized QinetiQ's approximately \$18 million price

¹⁵ The independent government estimate for the procurement is \$[DELETED] million. See AR, Tab 32, Initial Negotiation Memorandum, at 2.

¹⁶ The earlier price evaluations were conducted by a different contracting officer, who has since retired. See CO's Statement at 6; AR, Tab 34, Source Selection Decision, at 2. Our citation to statements by the CO refers to statements by the current CO. As part of her price evaluation, the former contracting officer conducted a comparative analysis of QMIS's and QinetiQ's proposed labor rates and the IGE rate for each labor category. See AR, Tab 32, Initial Negotiation Memorandum, at 7-8. The earlier price evaluation also factored in the agency's personnel costs for monitoring QinetiQ's and QMIS's performance, including during the transition period, based on the evaluations of the offerors' understanding of the requirement and management approaches, as well as on the price evaluators' historical knowledge of ITFO management. See id. at 14-16; Tab 30, Initial Source Selection Decision, at 15-17.

advantage, the CO concluded that QMIS's technical superiority outweighed that advantage.

Following notice that QMIS's proposal was again determined to reflect the best value to the agency, QinetiQ protested to our Office.

DISCUSSION

QinetiQ protests virtually every aspect of the agency's technical and price evaluations and claims, among other things, that the agency did not properly investigate its alleged PIA violation. See Protest at 3-64; Supp. Protest at 5-26; Comments & 2nd Supp. Protest at 6-101; 2nd Supp. Comments & 3rd Supp. Protest at 3-79; 3rd Supp. Comments at 2-31; see supra n.6. We have considered all of the protester's arguments, and, although we only discuss the more significant claims, we have found that none provide a basis to sustain QinetiQ's protest.

Procurement Integrity Act

QinetiQ protests that ICE did not reasonably evaluate its allegation of a PIA violation.¹⁷ Protest at 60. In this regard, the protester objects that the agency sought evidence only from QinetiQ. Id. The protester contends that the agency should have interviewed QinetiQ's former project manager to determine whether she actually disclosed QinetiQ proprietary information to the awardee. Comments & 2nd Supp. Protest at 81.

The agency responds that it followed the procedures set forth in the FAR for investigating alleged PIA violations. AR at 30. With respect to the protester's complaint that the agency did not interview QinetiQ's former project manager, the agency notes that it was unable to do so, because QinetiQ prohibited the agency

¹⁷ QinetiQ also alleges that QMIS engaged in "bait and switch" with respect to its proposed deputy program manager (QinetiQ's former project manager). Comments & 2nd Supp. Protest at 40-41; exh.1. The record shows that QMIS proposed this person as its deputy program manager, and after award, assigned her to this contract. This person resigned from QMIS approximately one month after contract award. To establish an impermissible bait and switch, a protester must show that a firm either knowingly or negligently represented that it would rely on specific personnel that it did not expect to furnish during contract performance, and that the misrepresentation was relied on by the agency and had a material effect on the evaluation results. Data Mgmt. Servs. Joint Venture, B-299702, B-299702.2, July 24, 2007, 2007 CPD ¶ 139 at 10. Here, QMIS in fact employed and assigned its proposed deputy program manager to this contract. There is no evidence in the record of a misrepresentation by QMIS with respect to this person.

from revealing the substance of QinetiQ's PIA allegation outside the agency.¹⁸ Supp. AR at 67.

The PIA provides that “[e]xcept as otherwise provided by law, a person shall not knowingly obtain contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.” 41 U.S.C. § 2102(b). FAR § 3.104-3(a) dictates that a contracting officer who receives or obtains information of a possible violation of the PIA must determine if the possible violation has any impact on the pending award or selection of the contractor. If the contracting officer concludes that a violation may impact the procurement, the contracting officer is required to report the matter to the head of the contracting activity (HCA). FAR § 3.104-7(b). The HCA must review the information and take appropriate action, which includes either: 1) advising the contracting officer to proceed with the procurement; 2) beginning an investigation; 3) referring information to appropriate criminal investigative agencies; 4) concluding that a violation occurred; or 5) recommending to the agency head that a violation has occurred and void or rescind the contract. Id.

Here, ICE followed the procedures set forth above in investigating the alleged PIA violation. Upon receiving information of a possible violation of the PIA, the head of the agency's contracting office investigated QinetiQ's allegations and concluded that no violation had occurred and that there had been no impact on the procurement. Based on the record of the agency's investigation, as described above, we see no basis to conclude that a PIA violation occurred, or that the agency's actions were unreasonable. See The GEO Group, Inc., B-405012, July 26, 2011, 2011 CPD ¶ 153 at 4.

In any event, the record does not show that QinetiQ was prejudiced in this procurement by its former project manager's actions. An unfair competitive advantage is a necessary element of a procurement integrity allegation since it relates to the resulting prejudice. Health Net Fed. Servs., LLC, B-401652.3, B-401652.5, Nov. 4, 2009, 2009 CPD ¶ 220 at 31. Even where a protester shows an actual or potential violation of the PIA, our inquiry does not end there. Rather, the question becomes whether the alleged PIA violation created an unfair competitive advantage. See, e.g., Unisys Corp., B-403054.2, Feb. 8, 2011, 2011 CPD ¶ 61 at 10 (protest that awardee's use of former government employee in preparation of its proposal provided the firm with unfair competitive advantage due to employee's access to proprietary information of the protester denied where record reflects that the information at issue was not competitively useful).

¹⁸ The record shows that the agency requested written authorization from QinetiQ's counsel to disclose information related to QinetiQ's PIA allegation. AR, Email from Agency Counsel to Protester's Counsel, June 20, 2011.

QinetiQ has not pointed to any concrete evidence of specific information--including anything in the protester's proposal or the agency's evaluation thereof--that QMIS may have learned that provided it with an unfair competitive advantage. Nor is there any evidence in the record showing that QMIS received an advantage from the actions of QinetiQ's former project manager. Though QinetiQ apparently believes that its former project manager may have provided QinetiQ's resumes and resume matrix to QMIS, the protester identifies no portion of the awardee's proposal that allegedly relied on protester's proprietary or competitively useful proposal information.¹⁹ See, e.g., Orbital Sci. Corp., B-400589, B-400589.2, Dec. 15, 2008 (protest of alleged PIA violation dismissed where protester has not shown that it was prejudiced by awardee's employment of former agency official and record shows no resulting significant change in awardee's proposed technical approach in that regard); Celeris Sys., Inc., B-404651, Mar. 24, 2011, 2011 CPD ¶ 72 at 8 (protest that the contracting agency provided source selection sensitive information denied where the allegations were investigated by the agency, and the protester has not pointed to any concrete evidence of specific information that awardee may have learned that provided it with an unfair competitive advantage).

Technical Evaluation

QinetiQ also challenges the agency's evaluation of its proposal under the management approach and technical approach factors.²⁰ The protester first complains that, following the reopening of the competition, ICE unreasonably lowered QinetiQ's earlier proposal ratings, assessed new weaknesses and deficiencies, and failed to assess additional strengths or assign higher ratings, even

¹⁹ Insofar as the protester alleges that its former project manager violated company email policy, see AR, Tab 6, PIA Letter, at 4; Tab 8, Protester's 1st Response to Agency PIA Request, Attach. A, at 1-3, that matter involves a private cause of action not for consideration by our Office. See, e.g., American Overseas Book Co., B-276675, July 10, 1997, 97-2 CPD ¶ 12 at 3 (protest that another book vendor's quotation violates publisher's discount policy concerns a dispute between private parties; Energy Resource Consultants, Inc., B-205636, Sept. 22, 1982, 82-2 CPD ¶ 258 at 5 (whether personnel violated firm's consulting policy a private matter).

²⁰ QinetiQ also raises various challenges to the agency's evaluation of the firms' past performance. Protest at 37; Supp. Protest at 5-9; Comments & 2nd Supp. Protest at 42-44. As a general matter, the evaluation of an offeror's experience and past performance is within the discretion of the contracting agency, and we will not substitute our judgment for reasonably based evaluation ratings. MFM Lamey Group, LLC, B-402377, Mar. 25, 2010, 2010 CPD ¶ 81 at 10. Here, we considered all of QinetiQ's arguments against the agency's past performance evaluations, but find that QinetiQ has not shown that the past performance evaluations were unreasonable or inconsistent with the RFP's stated evaluation criteria.

though, according to the protester, QinetiQ had enhanced its proposal. Protest at 29; Comments & 2nd Supp. Protest at 55-59. In this respect, the protester asserts that there is no evidence in the record that the agency actually reevaluated proposals, but that the agency simply changed its earlier ratings, strengths, weaknesses, and risk assessments. See 2nd Supp. Comments & 3rd Supp. Protest at 11-12.

There is no merit to QinetiQ's suggestion that the agency did not reevaluate proposals as it promised to do in its proposed corrective action.²¹ Rather the record is replete with documentation evidencing the agency's evaluation of the relative merits of QinetiQ's and QMIS's revised proposals. See AR, Tab 28, 3rd Discussions; Tab 29, 4th Discussions; Tab 23, QMIS Evaluations (post-Corrective Action); Supp. AR, Tab 7, QinetiQ Evaluations (post-Corrective Action); Tab 8, Consensus reevaluation note; see AR, Tab 32, Business Clearance Memorandum; Tab 34, Final Source Selection Decision.

With disagree with the protester's suggestion that the agency's reevaluation was unreasonable, simply because it differed from earlier evaluation findings; the fact that a reevaluation varies from an original evaluation does not constitute evidence that the reevaluation was unreasonable. It is implicit that a reevaluation could result in different findings and conclusions. Sabre Sys., Inc., B-402040.2, B-402040.3, June 1, 2010, 2010 CPD ¶ 128 at 5 n.3. The essence of an agency's evaluation is reflected in the evaluation record itself, not the adjectival ratings. Stateside Assocs., Inc., B-400670.2, B-400670.3, May 28, 2009, 2009 CPD ¶ 120 at 8. The overriding concern is not whether the final ratings are consistent with earlier, individual ratings, but whether they reasonably reflect the relative merits of proposals. Domain Name Alliance Registry, B-310803.2, Aug. 18, 2008, 2008 CPD ¶ 168 at 11 (denying protest that agency reevaluation and technical ratings were unreasonable because agency did not explain why the evaluations differed between the initial evaluation and reevaluation undertaken during corrective action); Impregilo Edilizia S.p.A., B-292468.4, Nov. 25, 2003, 2003 CPD ¶ 216 at 5 n.5 (while protester may disagree with technical rating change, its mere disagreement, absent factual or legal basis indicating why awardee's rating was improper, does not present an adequate basis for protest).

²¹ As noted above, QinetiQ's overall technical rating improved from red/unacceptable to green/acceptable as a result of the agency's reopening the competition, conducting discussions, and evaluating revised proposals. Compare AR, Tab 30, Initial Source Selection Decision, at 3-4, with Tab 34, Final Source Selection Decision, at 3-8.

The protester also contends that the agency did not evaluate QinetiQ's proposal in accordance with the stated evaluation criteria.²² See Protest at 24-27, 57; Supp. Protest at 16-27. For example, the protester complains that the evaluators applied weaknesses and deficiencies assessed under the management approach factor to all other evaluation factors, instead of evaluating each factor independently. Supp. Protest at 16-19; Comments & 2nd Supp. Protest at 90-93. Moreover, the protester disputes every deficiency and weakness assessed by the evaluators, including their evaluations of QinetiQ's various proposed plans, arguing that the assessments reflected agency concerns over requirements that were not identified in the RFP or SOW. See, e.g., id. The protester adds in this respect that the agency evaluated QinetiQ's and QMIS's proposals disparately by not crediting QinetiQ for content that was similar, if not superior, to the awardee's proposed approaches. See Supp. Protest at 19-25; Comments & 2nd Supp. Protest at 18-37.

The agency argues that the SSEB and CO reasonably determined that the QinetiQ's and QMIS's proposals were qualitatively different based on their respective content. See Supp. AR at 16. The agency contends that it considered, and gave appropriate weight to, QinetiQ's status as the incumbent subcontractor, recognizing that QinetiQ performed critical technical functions in that regard. AR at 8-10. According to the agency, however, QinetiQ failed to provide a proposal that was competitive enough for award despite being given multiple opportunities to improve its proposal during discussions. See id. at 11. In this respect, the CO urges that QinetiQ's shortfall in tactical management perspective presented an increased risk to the agency of contractor performance failure. See CO's Statement at 19. The CO asserts that information technology reliability is critical to ICE's mission success and that contractor failure is not acceptable. See id. at 20. The CO notes that law enforcement agencies, such as ICE, must have reliable information technology tools and information immediately available and that not having timely computer access to critical records could put an agent's life in danger or could cause the release of a criminal or terrorist that should be detained. Id.

An agency's evaluation of technical proposals is primarily the responsibility of the contracting agency, since the agency is responsible for defining its needs and identifying the best method of accommodating them, and it must bear the burden of any difficulties resulting from a defective evaluation. Wyle Labs., Inc., B-311123, Apr. 29, 2008, 2009 CPD ¶ 96 at 5-6. In reviewing protests of an agency's evaluation, our Office does not reevaluate proposals, rather, we review the evaluation to determine if was reasonable, consistent with the solicitation's evaluation scheme, as well as procurement statutes and regulations, and adequately documented. Wackenhut Servs., Inc., B-400240, B-400240.2, Sept. 10, 2008, 2008

²² QinetiQ argues generally that the agency did not evaluate the actual content of its proposal. As explained infra, there is no merit to this assertion.

CPD ¶ 184 at 6; Cherry Road Techs.; Elec. Data Sys. Corp., B-296915 et al., Oct. 24, 2005, 2005 CPD ¶ 197 at 6.

Here, the record shows that the agency's evaluation of QinetiQ's and QMIS's proposals was reasonable and consistent with the stated evaluation criteria. There is no support for the protester's argument that the agency failed to substantively evaluate QinetiQ's proposal. Rather, the contemporaneous record is thorough and well documented and includes hundreds of pages of evaluator notes, consensus ratings and rating matrices; four rounds of discussion agendas and minutes; evaluation reports and recommendations; negotiation memoranda; and detailed source selection documents. For example, the over 500 pages of evaluators' notes, ratings, and matrices include extensive assessments of, and copious references to, virtually every section of QinetiQ's management and technical plans and approaches, plainly reflecting a detailed, qualitative analysis of the protester's proposal. See AR, Tab 19, QinetiQ Evaluator's Notes and Consensus Ratings (pre-Corrective Action); Tab 20, QMIS Evaluations (pre-Corrective Action); Tab 23, QMIS Evaluations (post-Corrective Action); Supp. AR, Tab 7, QinetiQ Evaluations (post-Corrective Action). The agency's extensive discussion questions also evidence a detailed evaluation of QinetiQ proposals. See AR, Tabs 26-29, QinetiQ, QMIS Discussions.

We find that the agency evaluated the relative merits of QinetiQ's and QMIS's proposals reasonably and that agency evaluators assessed strengths, weaknesses, and ratings in a fair and impartial manner consistent with the RFP. To the extent that the protester complains that the agency may have applied assessments under one evaluation factor in assessing QinetiQ's proposal under other factors, the RFP explicitly provided for an integrated evaluation of offerors' proposals. RFP, Evaluation, at 3, 6, 9. Although the CO in her selection decision may not have discussed each and every asserted strength and weakness as the protester would have liked, or agreed with the protester as to the significance of certain aspects of its proposed management and technical approaches, the record demonstrates that the SSEB and CO considered all of the information submitted by offerors' and available to the agency, and issued a well-reasoned and rational evaluation report and source selection decision that fairly highlighted key discriminators between QinetiQ's and QMIS's proposals. QinetiQ's disagreement with the agency's conclusions regarding weaknesses in its proposal does not establish that the agency's judgment concerning the merits of the protester's proposal was unreasonable. See Savannah River Alliance, LLC, B-311126 et al., Apr. 25, 2008, 2008 CPD ¶ 88 at 7 (protest of evaluation ratings based on protester's selective identification of, and disagreement with, evaluation assessments denied where detailed evaluation record shows that agency assessed ratings based on proposals' merits and fairly highlighted key discriminators in that regard).

Discussions

QinetiQ also argues that the agency failed to conduct meaningful discussions. Specifically, the protester complains that ICE did not fully disclose the agency's concerns with QinetiQ's management approach, evaluated performance risk, and other supposed weaknesses. See Protest at 42-43; Comments & 2nd Supp. Protest at 69-71. Moreover, the protester believes that the agency misled QinetiQ into removing several innovations and efficiencies that QinetiQ had proposed in earlier versions of its proposal and complains that the agency instructed QinetiQ to focus on providing routine services. Protest at 41-45.

The agency states that it informed QinetiQ in discussions of all evaluated deficiencies and weaknesses in QinetiQ's proposal, but that QinetiQ failed to remedy those deficiencies and weaknesses or provide a better proposal. AR at 25; see Supp. AR at 65. The agency disputes that it misled QinetiQ and contends that QinetiQ's proposed innovations or efficiencies were actually proposals to perform services that were not required under the SOW. See CO's Statement at 5.

It is a fundamental precept of negotiated procurements that discussions, when conducted, must be meaningful, equitable, and not misleading. See The Boeing Co., B-311344 et al., June 18, 2008, 2008 CPD ¶ 114 at 49. To satisfy the requirement for meaningful discussions, an agency need only lead an offeror into the areas of its proposal requiring amplification or revision; all-encompassing discussions are not required, nor is the agency obligated to "spoon-feed" an offeror as to each and every item that could be revised to improve its proposal. L-3 Commc'ns Corp., BT Fuze Prods. Div., B-299227, B-299227.2, Mar. 14, 2007, 2007 CPD ¶ 83 at 19.

The record here does not support the protester's assertion that the agency conducted misleading or non-meaningful discussions. Rather, as the agency correctly points out, QinetiQ was afforded multiple opportunities to strengthen numerous aspects of proposal.²³ For example, the record shows that the agency repeatedly pointed out problems with QinetiQ's proposal with regard to overseas support. See AR, Tab 26, 1st QinetiQ Discussions, Agenda at 2, Minutes at 2 (government is not accepting QinetiQ's proposal for overseas services and clear, creative solutions with definitive management in that regard); Tab 28, 3rd QinetiQ Discussions, at 4 (insufficient overseas hours and coverage); Tab 29, 4th QinetiQ Discussions, at 3 (QinetiQ's proposal to [DELETED] will impact performance at

²³ Where an agency has adequately advised an offeror of an area of concern, there is no legal requirement that it raise the issue again in a subsequent round of discussions, even where the issue continues to be of concern to the agency. LIS, Inc., B-400646.4, Jan. 4, 2010, 2010 CPD ¶ 18 at 11.

home and overseas). The agency also pointed out--during each round of discussions--that QinetiQ had proposed services that were not required under the SOW. See AR, Tab 26, 1st QinetiQ Discussions, Agenda at 3 (services proposed that are not required and/or are outside scope); Tab 27, 2nd QinetiQ Discussions, Minutes at 1-2 (ITFO services to Federal Protective Services not included in SOW; offerors not asked to provide training to IT users); Tab 29, 3rd QinetiQ Discussions, at 7 (agency has no plans to centralize local area network and/or email support); Tab 30, 4th QinetiQ Discussions, at 4 (no requirement for Tier 1 ticket service). The record also shows that the agency disclosed other concerns with QinetiQ's proposed quality control (AR, Tab 28, 3rd QinetiQ Discussions, at 3-4, 6, Tab 29, QinetiQ 4th Discussions, at 4), QinetiQ's proposed transition plan (AR, Tab 28, QinetiQ 3rd Discussions, at 2), QinetiQ's proposed surge resources (AR, Tab 29, QinetiQ 4th Discussions, at 3), and QinetiQ's proposed program management approach (AR, Tab 29, QinetiQ 4th Discussions, at 2).

In large part, QinetiQ's objections to the adequacy of the agency's discussions is grounded upon complaints that it was not informed of every instance in which its proposal received less than favorable comments. However, listing every less than favorable comment by evaluators during their review--coupled with an assertion that each of these comments reflects a weakness that had to be raised during discussions--is an ineffective surrogate for a substantive analysis of the adequacy of discussions. Cygnus Corp., B-275181, Jan. 29, 1997, 97-1 CPD ¶ 63 at 11.

Price Evaluation

QinetiQ also challenges the agency's evaluation of QMIS's price proposal. QinetiQ argues that the agency did not consider whether QMIS's price was unbalanced, where QMIS proposed significantly higher prices in the base year as compared to the option years. Protest at 15-16. The protester contends that such a price disparity reflects QMIS's misunderstanding of the contract requirements and, in this respect, argues that the agency failed to consider whether QMIS's proposed prices were unreasonable or whether QMIS's proposed labor rates were unrealistic. Comments & 2nd Supp. Protest at 44-47.

The depth of an agency's price analysis is a matter within the sound exercise of the agency's discretion. Computer Sys. Int'l, Inc., B-276955, B-276955.2, Aug. 13, 1997, 97-2 CPD ¶ 49 at 3. It is up to the agency to decide upon the appropriate method for evaluation of cost or price in a given procurement, although the agency must use an evaluation method that provides a basis for a reasonable assessment of the cost of performance under the competing proposals. S.J. Thomas Co., Inc., B-283192, Oct. 20, 1999, 99-2 CPD ¶ 73 at 3. Among the price analysis techniques that may be used are comparison with other prices received under the solicitation and comparison of proposed prices with IGEs. See FAR § 15.404-1(b)(2).

We find no basis to question the agency's price analysis here. As noted above, the CO performed comparative analyses of offerors' proposed prices, including their individual rates for each labor category, against the independent government estimate. She specifically found that QMIS's higher base year prices reflected the firm's costs that would be incurred for transition, where QinetiQ, as an incumbent subcontractor, would incur less costs. Moreover, the CO found that QMIS's proposed prices reflected its technical approach. In short, the record shows that the CO reasonably considered the reasonableness and realism of QMIS's proposed price and concluded that QMIS's proposal was not unbalanced.

Best Value Determination

QinetiQ also challenges the CO's selection decision, asserting that her best value determination was flawed because it was based on evaluations that, according to the protester's arguments described above, were unreasonable. Protest at 56-58; Comments and Supp. Protest at 73-79. Moreover, QinetiQ contends that the agency's price/technical tradeoff ignored the low risk and advantage inherent in QinetiQ's status as an incumbent. Id.

Selection officials have considerable discretion in making price/technical tradeoff decisions. American Material Handling, Inc., B-297536, Jan. 30, 2006, 2006 CPD ¶ 28 at 4. Award may be made to a firm that submitted a higher-rated, higher-priced proposal where the decision is consistent with the evaluation criteria and the agency reasonably determines that the technical superiority of the higher-priced offer outweighs the price difference. Id. The propriety of the cost/price-technical tradeoff decision does not turn on the difference in the technical scores or ratings per se, but on whether the selection official's judgment concerning the significance of the difference was reasonable and adequately justified in light of the RFP's evaluation scheme. Johnson Controls World Servs., Inc., B-289942, B-289942.2, May 24, 2002, 2002 CPD ¶ 88 at 6.

As discussed above, there is no merit in QinetiQ's objection to the agency's evaluation of technical and price proposals. Thus, there is no basis to question the CO's reliance upon those evaluation judgments in her source selection. We find that the CO reasonably considered the merits of the firms' proposals based upon the firms' respective evaluated strengths, weaknesses, and deficiencies. In this regard, the CO considered QinetiQ's status as a subcontractor under the incumbent contract. The record shows that the CO reasonably determined that QMIS's

higher-rated proposal reflected technical superiority that outweighed QinetiQ's price advantage. Although QinetiQ disagrees with this judgment, it has not shown it to be unreasonable.

The protest is denied.

Lynn H. Gibson
General Counsel