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# Decision

**Matter of:** Delphinus Engineering, Inc.

**File:** B-421574

**Date:** July 5, 2023

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## DIGEST

1. Protest challenging the agency's evaluation under non-cost/price and cost/price factors is denied where the agency's evaluation was reasonable and in accordance with the solicitation.
  2. Protest alleging that agency engaged in misleading exchanges regarding a cost accounting standards disclosure statement is denied where the exchanges were not misleading.
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## DECISION

Delphinus Engineering, Inc., of Eddystone, Pennsylvania, protests the issuance of a task order to INDUS Technology, Inc., a small business of San Diego, California, under request for proposals (RFP) No. N0025321R3004, which was issued by the Department of the Navy, Naval Undersea Warfare Center (NUWC) Division, Keyport, Washington, for industrial support services.

We deny the protest.

## BACKGROUND

The agency issued the RFP on April 18, 2022, pursuant to the procedures in Federal Acquisition Regulation (FAR) subpart 16.5, to firms holding Navy SeaPort Next

Generation (Seaport-NxG) multiple-award indefinite-delivery, indefinite-quantity (IDIQ) contracts. Contracting Officer's Statement (COS) at 1. The RFP, which the agency amended twice, sought proposals for the provision of industrial support services to the various industrial operations, depot repair, and torpedo intermediate maintenance functions of the NUWC Division, Keyport. *Id.* at 1-4; Agency Report (AR), Tab 2, RFP at 18.

The RFP contemplated issuance of a single, cost-plus-fixed-fee task order with a 12-month base period and three 12-month options, using a best-value tradeoff methodology considering four non-cost/price factors and cost/price. RFP at 75-76, 140, 155. The RFP set forth the four non-cost/price factors in descending order of importance: technical approach and capability; management approach; past performance; and small business participation. *Id.* at 155. The management approach factor also included three subfactors of descending importance: staffing plan and management approach; key personnel; and quality assurance plan. *Id.* The RFP provided that the non-cost/price factors, when combined, were significantly more important than cost/price. *Id.*

Under the technical approach and capability factor, offerors were to submit a narrative demonstrating their qualifications and experience to perform all tasks and subtasks delineated in the RFP's statement of work (SOW). *Id.* at 145. The RFP's instructions advised that offerors could demonstrate their technical capability through specific examples of previous performance of similar services or, in the absence of similar efforts, a description of how the offeror intended to meet the requirements. *Id.* The agency would evaluate the degree to which the offeror's technical proposal demonstrated the ability to perform the SOW's requirements. *Id.* at 156.

The staffing plan and management approach subfactor under the management approach factor encompassed several aspects. *Id.* at 145-146, 156-157. Relevant here, the RFP instructed offerors to submit their hiring process for timely filling vacancies, as well as specific strategies for minimizing staffing gaps. *Id.* at 145. Offerors also were to provide their historical recruitment cycle times, from departure to onboarding of qualified individuals. *Id.* The agency would evaluate this aspect for the effectiveness of the offeror's processes for hiring and retaining personnel with the proper education, experience, qualifications, and security clearance, as well as for the feasibility and effectiveness of the offeror's strategies for minimizing staffing gaps. *Id.* at 156.

Under the small business participation factor, offerors were to submit a small business participation commitment document (SBPCD) detailing their approach to meeting the RFP's small business goals, including specific identification of small businesses proposed to perform on the contract, the type of work they would perform, and the value (in both dollars and percentage) of that work. *Id.* at 148. The agency would evaluate proposals for the quality of detail of offerors' SBPCDs and their commitment to maximizing participation for small businesses across all small business subcategories. *Id.* at 159. The RFP advised that enforceable commitments would be weighted more

heavily than non-enforceable commitments in evaluating the extent of offerors' commitment to using small businesses, and that if the offeror was required to submit a small business subcontracting plan, the SBPCD should complement that plan. *Id.*

The cost/price proposal consisted of several elements. Relevant here, offerors were to submit a cost/price narrative describing the level of effort, cost components including direct labor rates, indirect rates, escalation, taxes, and other direct costs, and proposed fee, among other aspects. *Id.* at 150-151. In addition, offerors were to submit a cost summary spreadsheet--identified as attachment 5--identifying all costs for the full level of effort, including direct labor rates, indirect rates, escalation, taxes, other direct costs, and fees. *Id.* at 151-152. With respect to direct labor rates, the RFP instructions for both the cost/price narrative and the cost summary spreadsheet directed offerors to "propose rates no lower than the minimums identified by annual pay ranges in . . . the SOW." *Id.* at 150, 151.

The RFP provided that offerors' cost/price proposals would be evaluated for realism and completeness, among other things. *Id.* at 159. The agency would utilize its cost realism analysis to determine if a proposal contained unacceptable risk. *Id.* at 159, 160. The RFP further advised that if the agency considered proposed costs to be unrealistic, it would adjust an offeror's proposed costs upward to reflect more realistic costs. *Id.* at 159. With respect to direct labor rates, the RFP stated that "proposed labor rates that fall below the appropriate wage determination minimums identified in . . . the SOW, will be adjusted to those minimums." *Id.* at 160-161.

The agency received four proposals, including from the protester and INDUS, by the RFP's submission date of June 2, 2022. COS at 11. As relevant here, the agency evaluated the proposals submitted by the protester and awardee as follows:

	<b>Delphinus</b>	<b>INDUS</b>
<b>TECHNICAL APPROACH AND CAPABILITY</b>	Good	Outstanding
<b>MANAGEMENT APPROACH</b>	Acceptable	Acceptable
<b>Staffing Plan and Management Approach</b>	Acceptable	Acceptable
<b>Key Personnel</b>	Acceptable	Acceptable
<b>Quality Assurance Plan</b>	Acceptable	Acceptable
<b>PAST PERFORMANCE</b>	Substantial Confidence	Satisfactory Confidence
<b>SMALL BUSINESS PARTICIPATION</b>	Acceptable	Outstanding
<b>PROPOSED COST/PRICE</b>	\$79,144,784	\$84,518,768
<b>EVALUATED COST/PRICE</b>	\$83,160,744	\$86,279,331

AR, Tab 12, Business Clearance Memorandum (BCM) at 18, 28-29.

The source selection authority (SSA) compared the relative strengths and weaknesses of each proposal under each of the evaluation factors, concluding that INDUS's proposal was superior under the technical approach and small business participation factors, the proposals were relatively equal under the management approach factor, and Delphinus's proposal was superior under the past performance factor. *Id.* at 30-36. As discussed in further detail below, the SSA also determined that, while INDUS's proposal had a higher total evaluated cost/price, it also presented a lower cost risk with respect to the potential of reaching the task order's total awarded value prior to providing the required level of effort, as well as having an adequate cost accounting standards (CAS) disclosure statement. *Id.* at 36-37. The SSA determined that INDUS's proposal represented the best value to the government, finding that its superiority under technical approach and capability--the most important factor--and small business participation, as well as its comparatively lower cost risk, merited the associated cost premium. *Id.* at 35-38.

On March 15, 2023, the agency notified the protester that it had issued the task order to INDUS, simultaneously providing a written debriefing that further notified the protester of its opportunity to submit additional questions. See Protest, exh. A; AR, Tab 13, Debriefing. After receiving the agency's response to its additional questions, the protester submitted this protest to our Office.<sup>1</sup>

## DISCUSSION

The protester raises several challenges to the agency's evaluation of its proposal and tradeoff analysis. First, the protester contends that the agency unreasonably failed to credit its proposal with multiple strengths under the technical approach and capability, management approach, and small business participation factors. Next, the protester challenges the agency's assignment of a weakness to its proposal under the technical approach and capability factor. With respect to the cost/price factor, the protester argues that the agency improperly adjusted several of the protester's proposed labor rates upwards, unreasonably assessed cost risk, and engaged in misleading exchanges and unreasonably assessed a risk regarding a CAS disclosure statement. Lastly, the protester contends that the agency's best-value tradeoff analysis both relied on a flawed evaluation and failed to meaningfully consider past performance. For the reasons that follow, we find no basis on which to sustain the protest.<sup>2</sup>

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<sup>1</sup> Because the estimated value of the issued task order is over \$25 million, this procurement is within our jurisdiction to hear protests related to the issuance of orders under multiple-award IDIQ contracts awarded under the authority granted in title 10 of the United States Code. 10 U.S.C. § 3406(f).

<sup>2</sup> The protester raises a number of additional and collateral arguments. Although our decision does not specifically address each argument, we have considered all of the protester's arguments and find that none provides a basis on which to sustain the protest.

## Uncredited Strengths

Delphinus challenges the agency's evaluation of its proposal under the technical approach and capability, management approach, and small business participation factors, alleging that the agency unreasonably failed to credit Delphinus's proposal with several strengths. In response, the agency argues that its evaluation, to include its assignment of strengths, was reasonable and consistent with the terms of the RFP. While we do not discuss each individual evaluation challenge or variation thereof raised by the protester, as reflected in the representative examples addressed herein, we have considered them all and find that none provides a basis to sustain the protest.

As noted above, this task order competition was conducted pursuant to FAR subpart 16.5. The evaluation of proposals in a task order competition is primarily a matter within the contracting agency's discretion because the agency is responsible for defining its needs and the best method of accommodating them. *Engility Corp.*, B-413120.3 *et al.*, Feb. 14, 2017, 2017 CPD ¶ 70 at 15. When reviewing protests of an award in a task order competition, we do not reevaluate proposals but, rather, examine the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations. *DynCorp Int'l LLC*, B-411465, B-411465.2, Aug. 4, 2015, 2015 CPD ¶ 228 at 7. A protester's disagreement, without more, does not form the basis for us to conclude that an evaluation was unreasonable. *STG, Inc.*, B-405101.3 *et al.*, Jan. 12, 2012, 2012 CPD ¶ 48 at 7.

Under the technical approach and capability factor, the protester alleges that the agency unreasonably failed to credit Delphinus's proposal for its demonstrated experience across the SOW tasks. Protest at 24-35. For example, the protester contends that the agency should have credited its proposal for Delphinus's experience performing the services required by SOW section 4.5, relating to electronics shop test and repair. *Id.* at 27-28. The protester points to its more than 14 years of experience providing what it contends are similar services, and highlights its proposal's identification of 13 areas of repair services and 31 types of test set system maintenance Delphinus has performed. *Id.*

In response, the agency has provided a sworn declaration from the chair of the source selection evaluation board (SSEB), explaining why the agency concluded that the identified aspects of the protester's proposal did not merit a strength. See AR, Tab 16, Decl. of SSEB Chair, ¶¶ 5-6. As he explains, the agency found that Delphinus's proposal identified experience with items that were mechanical, rather than electrical, in nature, pertained to general or low-level work, or related to commercial, off-the-shelf items, and therefore failed to demonstrate the experience and expertise necessary to perform advanced troubleshooting and depot work on custom, complex electrical items so as to merit a strength. *Id.*

The protester does not refute the specific statements of the SSEB chair, instead citing the number of hours its proposal states Delphinus and its teammates have provided in

support of requirements similar to SOW section 4.5, and arguing that the SSEB chair's statement is a *post hoc* rationalization that is entitled to little weight. See Comments at 20-21.

An agency's judgment that the features identified in the proposal did not significantly exceed the requirements of the solicitation--and thus did not warrant the assessment of unique strengths--is a matter within the agency's discretion and one that we will not disturb where the protester has failed to demonstrate that the evaluation was unreasonable. *Protection Strategies, Inc.*, B-416635, Nov. 1, 2018, 2019 CPD ¶ 33 at 8 n.4. In that regard, an agency's contemporaneous evaluation record is not required to "prove a negative," or document determinations of adequacy (*i.e.*, why a proposal did *not* receive a strength or weakness). See, *e.g.*, *CSRA LLC*, B-417635 *et al.*, Sept. 11, 2019, 2019 CPD ¶ 341 at 10 n.15; *Cognosante MVH, LLC*, B-418986 *et al.*, Nov. 13, 2020, 2021 CPD ¶ 3 at 8; *By Light Prof'l IT Servs., LLC*, B-417191.3, Dec. 4, 2019, 2019 CPD ¶ 416 at 4 n.5; *Booz Allen Hamilton, Inc.*, B-417418 *et al.*, July 3, 2019, 2019 CPD ¶ 246 at 17; see also FAR 15.305(a). When a protester raises a challenge regarding why a proposal was not assigned a strength or weakness, we continue to review whether an agency's explanation or documentation--contemporaneous or otherwise--demonstrates that the evaluation was reasonable and consistent with the stated evaluation criteria. See *By Light Prof'l Servs.*, *supra* at 4-5 (finding the post-protest explanations provided by the agency established the reasonableness of the evaluation regarding the alleged unacknowledged strengths); *Cognosante*, *supra* at 7-8 (finding the statements from the evaluators and contracting officer responding to the protester's arguments demonstrated the reasonableness of the agency's decision not to assign the challenged strengths).

Here, we conclude that the agency has demonstrated that it reasonably determined the protester's proposal did not merit a strength. In arguing that the agency unreasonably failed to credit its proposal, the protester has pointed to its proposal's discussion of experience performing requirements that the protester contends are similar to those of SOW section 4.5. The RFP made clear that, where a proposal used experience to demonstrate the ability to perform the contract requirements, the agency would evaluate "the degree to which [the] proposal demonstrates experience" performing those requirements on "efforts that are of similar technical requirements and scope." RFP at 156.

As the SSEB chair explains, the particular efforts cited in the protester's proposal largely did not reflect similar technical requirements and scope, as many of the cited efforts were of a different type or lesser complexity than that required by SOW section 4.5. Thus, the agency's assessment was in keeping with the RFP's evaluation methodology. Moreover, the protester has not rebutted the substance of the agency's conclusion with respect to the limited similarity of the cited efforts. In the absence of evidence suggesting that the agency erred, we see no basis to conclude that the agency's judgment in this regard was unreasonable or otherwise inconsistent with the terms of the RFP.

Also under the technical approach and capability factor, the protester argues that its proposal merited a strength for its cross-qualification program, which the protester contends offers a benefit to the agency through personnel with wider expertise and greater workforce flexibility. Protest at 29-30. The agency responds that the protester's proposal provided little information regarding the cross-qualification program as a company asset independent from the agency's own program that facilitates cross-qualification, and further that the agency viewed the protester's cross-qualification program as a common corporate practice more beneficial to Delphinus's resource management than to the agency's requirements. AR, Tab 16, Decl. of SSEB Chair, ¶ 9. In its comments on the agency report, the protester argues that its proposal pointed out that the flexibility afforded by cross-qualifying personnel was a benefit to the agency, and furthermore that "the benefits are obvious in this context because of the nature of the IDIQ contract, where the [a]gency does not know its exact needs in each area." Comments at 22.

We again conclude that the protester has not demonstrated that the agency's evaluation was unreasonable. The principal discussion of Delphinus's cross-qualification program consists of two sentences in the introductory paragraph to the technical approach and capability section of its proposal, which state that the protester [DELETED] and that [DELETED] personnel provide flexibility to the government. AR, Tab 3, Delphinus Proposal Vol. I at 1. The proposal does not, for example, provide specific examples of how cross-qualification provides a benefit to the government in terms of exceeding requirements or substantially improving Delphinus's ability to perform the requirements of the SOW. Similarly, Delphinus's proposal also shows cross-qualification as a step in its new employee qualification process, *see id.* at 15, and includes short statements regarding a supervisor's creation of a [DELETED] system and the fact that an employee is cross-qualified, *see id.* at 16-17, but those statements do not provide meaningful detail regarding Delphinus's cross-qualification program or how that program offers a benefit to the agency.

In short, while the protester may disagree, it was not unreasonable for the agency to conclude that Delphinus's proposal did not provide supporting detail regarding the benefit to the agency of the protester's cross-qualification program. Moreover, that conclusion was not unreasonable in the absence of supporting detail in the protester's proposal demonstrating the benefits of that program to the agency, notwithstanding the protester's contention that "the benefits are obvious." *See, e.g., Scientific and Commercial Sys. Corp.; Omni Corp., B-283160 et al.*, Oct. 14, 1999, 99-2 CPD ¶ 78 at 14 ("Offerors are responsible for preparing their proposals in a manner that establishes that what is offered will meet the government's needs, and agencies are not obligated to search out omitted information or to credit offerors for information that they may have, but failed to submit with their proposal."). We therefore deny this protest allegation.

The protester also alleges that the agency unreasonably failed to credit its proposal with a strength for its approach to minimizing staffing gaps under the staffing plan and management approach subfactor of the management approach factor. Protest at 39.

The agency responds that it considered the protester's approach but found that it consisted of fairly standard organizational practices, and, furthermore, that the proposal's stated average of [DELETED] calendar days between departure and onboarding of qualified resources was not exceptional in light of the SOW's requirement to replace departing employees within 30 days. AR, Tab 16, Decl. of SSEB Chair, ¶ 13. In its comments on the agency report, the protester largely restates the cited portions of its proposal, *compare* Protest at 39 *with* Comments at 34, and argues that the agency failed to consider the impacts of COVID-19 on staffing when reviewing Delphinus's average hiring cycle time, *see* Comments at 34-35.

We conclude that the protester has not demonstrated that the agency's evaluation was unreasonable. The protester disagrees with the agency's judgment that its approach to minimizing staffing gaps consisted of standard practices, but offers no substantial support for the contention that its approach went beyond standard practice or offered a significant benefit to the agency. Furthermore, it was reasonable for the agency to rely on the protester's actual hiring cycle data to determine that Delphinus's approach would not minimize staffing gaps in a way that exceeded requirements, as that data provides empirical insight into the results of the protester's approach, which are consistent with but do not exceed the SOW's requirements. Additionally, while the protester's proposal does reference the challenges presented by COVID-19 and how Delphinus developed strategies to mitigate its impact, it does not provide any data to contextualize the impact of COVID-19 on its hiring cycle times, such as average times prior to the pandemic, or how those times rose and then returned to historic averages. *See* AR, Tab 3, Delphinus Proposal Vol. I at 31-32. Similarly, it provides no data to demonstrate that Delphinus's approach did, in fact, mitigate the challenges arising from COVID-19. On this record, we do not find unreasonable the agency's conclusion that the protester's approach to minimizing staffing gaps was unexceptional and therefore did not merit a strength.

Lastly, Delphinus alleges that its proposal merited a strength under the small business participation factor for the extent to which it specifically identified small businesses the protester proposed to use for this effort. Protest at 49. The agency responds that the RFP instructed offerors to identify the small businesses proposed, and that a strength was not merited for complying with that instruction. Memorandum of Law (MOL) at 25. The protester contends that a strength was warranted because all of the named subcontractors are performing on the predecessor contract, and there accordingly is a benefit to the agency in terms of demonstrated ability and reduced transition and performance risk. Comments at 46.

We conclude that the agency's evaluation was consistent with the RFP's evaluation methodology. While the protester contends that its proposed use of subcontractors currently performing on the predecessor contract increases the chances of successful performance, that was not among or logically encompassed within the evaluation criteria under the small business participation factor. *See, e.g., Owens & Minor Distribution, Inc.*, B-418223.5 *et al.*, Feb. 3, 2021, 2021 CPD ¶ 74 at 5 (denying protest where protester contended agency failed to consider matters not logically encompassed within evaluation factor); *National Disability Rights Network, Inc.*, B-413528, Nov. 16,



2016, 2016 CPD ¶ 333 at 9 (same). That factor was concerned with the extent to which a proposal demonstrated an offeror would meet or exceed the agency's small business participation objectives, not the extent to which the proposed small business subcontractors increased the chances of successful performance. See RFP at 159. To that end, the record reflects that the agency assigned a strength to Delphinus's proposal for having enforceable commitments with the named small business subcontractors. See AR, Tab 12, BCM at 34. Thus, consistent with the RFP's terms, the agency gave credit to the protester's proposal with respect to its specific identification of and enforceable commitments with small business subcontractors. Accordingly, we deny this protest allegation.<sup>3</sup>

As the representative examples discussed above reflect, we have reviewed all of the protester's arguments that the agency unreasonably failed to credit its proposal with multiple strengths, and conclude that none provides a basis on which to sustain the protest.

#### Unreasonably Assigned Weakness

The protester contends that the agency unreasonably assigned a weakness to its proposal under the technical approach and capability factor for failure to detail experience with or provide an adequate approach to test software development and the design and building of test interface adapters. Protest at 30-32. The protester alleges

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<sup>3</sup> The protester also alleges that the agency unreasonably assigned a weakness to its proposal under the small business participation factor for inconsistencies. Protest at 44-47. Even assuming that the evaluators erred in this respect, the record reflects that the weakness did not factor into the source selection decision, as the SSA found the weakness had "limited risk" and he therefore "did not consider the weakness . . . significant." AR, Tab 12, BCM at 36. To that end, the SSA did not cite the weakness among the reasons for determining that INDUS's proposal represents the best value to the government. See *id.* at 37-38. Thus, as the SSA contemporaneously determined that this weakness would not affect the ultimate best-value tradeoff decision, we conclude that the protester has failed to demonstrate that it was competitively prejudiced by this alleged error. See *CACI, Inc.-Fed.*, B-418110.3 *et al.*, May 22, 2020, 2020 CPD ¶ 181 at 13 (finding no prejudice in the assignment of weaknesses where the source selection authority did not rely on the weaknesses in distinguishing between the proposals in the best-value decision); *Dell Servs. Fed. Gov't, Inc.*, B-412340 *et al.*, Jan. 20, 2016, 2016 CPD ¶ 43 at 5 n.3 (same).

Furthermore, even removing this weakness, it is not apparent that the offerors' respective competitive positions under the small business participation factor would change. In this regard, the SSA found that INDUS's proposal warranted a rating of outstanding based on an assigned strength that was a discriminator in INDUS's favor. See AR, Tab 12, BCM at 35. Thus, even if the protester's weakness were removed, such an outcome would have no bearing on the assessed superiority of INDUS's proposal under this factor based on the unique strength assigned to INDUS's proposal.

that its proposal detailed relevant experience by citing Delphinus's experience performing predecessor efforts under the field maintenance services SOW area, under which these tasks fall, and discussed test interface adapters and test support software. *Id.* at 31 (citing AR, Tab 3, Delphinus Proposal Vol. I at 8).

We conclude that the agency reasonably assigned this weakness. As the agency points out, the cited discussion of test software and test interface adapters in the protester's proposal is limited. MOL at 16. Moreover, the SSEB chair explains that the proposal's discussion of test interface adapters pertains to completing AutoCAD drawings, not designing or building such adapters, as is required under the SOW. AR, Tab 16, Decl. of SSEB Chair, ¶ 11; *compare also* AR, Tab 3, Delphinus Vol. I Proposal at 8 ("AutoCAD drawings and schematics have been developed and approved for interface adapters[.]") *with* RFP at 36 ("The subtask includes designing and building the test interface adapter[.]"). He similarly explains that the protester's proposal discusses test software only in the context of identifying when such software is needed for certain repair procedures, not the software design or development that is required under the SOW. AR, Tab 16, Decl. of SSEB Chair, ¶ 11. On this record, we find that the agency's assignment of a weakness for failure to demonstrate experience with or an adequate approach to this aspect of the work was reasonable.

#### Cost/Price Evaluation

The protester raises several challenges to the agency's cost/price evaluation. First, Delphinus contends that the agency unreasonably made upward adjustments to some of Delphinus's direct labor rates, resulting in an improper increase to the protester's total evaluated cost/price. Next, the protester alleges that the agency unreasonably determined the risk that Delphinus would reach its contractual cost ceiling prior to completing the required level of effort. Finally, the protester contends that the agency engaged in misleading exchanges with Delphinus regarding the need for a CAS disclosure statement, and unreasonably assessed a risk based on the protester's lack of an adequate disclosure statement. For the reasons that follow, we find that none of these allegations provides a basis on which to sustain the protest.

#### Adjustments to Direct Labor Rates

As relevant here, the record reflects that the agency accepted as realistic some, but not all, of the protester's direct labor rates that fell below the minimums identified in the RFP. As addressed above, the RFP instructed offerors to propose labor rates meeting the minimums specified in the SOW, and advised that the agency would adjust any rates that fell below those minimums. Notwithstanding the RFP's direction, however, Delphinus proposed several rates substantially below the minimums, based on rates that Delphinus asserted it was currently paying to the employees proposed for those positions. Delphinus argues that the agency irrationally accepted only some of the protester's proposed variances, while the agency contends that it reasonably considered the proposed variances on a case-by-case basis and accepted only those

that were reasonably supported. As addressed below, we find no basis to object to the agency's evaluation.

The record demonstrates that the agency reasonably considered the individual circumstances for each labor category at issue. For example, the RFP specified a minimum annual salary of \$157,120 for the program manager, see RFP at 23, which the agency's cost and price analysis team (CPAT) equated to an hourly rate of \$81.83, see AR, Tab 8, CPAT Report at 25. While Delphinus proposed an hourly rate of \$[DELETED] for this position, the CPAT adjusted that figure to \$[DELETED], which is the rate at which Delphinus was currently billing that position to the agency, as reflected in payroll data that Delphinus included in its proposal. See *id.* at 25, 26; see also AR, Tab 5, Delphinus Proposal Vol. IV at 2 (identifying "May 2022 Comp Sheet" as part of the attachment 5 cost summary); Tab 6, Delphinus Proposal Vol. IV, attach. 5 at 128-138. Although the currently billed figure fell below the RFP's minimum salary, the CPAT accepted it as realistic because it was the rate currently being invoiced for that position under a contract for which performance has been satisfactory. See AR, Tab 8, CPAT Report at 26; AR, Tab 17, Decl. of CPAT Member, ¶ 5.

The RFP specified the same minimum annual salary of \$157,120 for the deputy program manager, which the CPAT also equated to an hourly rate of \$81.83. See RFP at 23; AR, Tab 8, CPAT Report at 25. Similarly, while Delphinus proposed an hourly rate of \$[DELETED] for the deputy program manager, the CPAT adjusted that figure to \$[DELETED] based on current billing rates and accepted it as realistic. See AR, Tab 8, CPAT Report at 25, 26. Notably, Delphinus's payroll information indicated that the individual proposed to serve as deputy program manager currently holds the job title of engineering technician VI, not deputy program manager. See AR, Tab 6, Delphinus Proposal Vol. IV, attach. 5 at 15 (identifying deputy program manager), 135 (payroll data showing current title). The CPAT compared the RFP's position descriptions for the deputy program manager and engineering technician VI, as well as their associated salary minimums, and concluded that the two were sufficiently similar in function to consider Delphinus's proposed deputy program manager as the incumbent for the position. AR, Tab 17, Decl. of CPAT Member, ¶ 5. The CPAT therefore accepted the currently billed rate as realistic, notwithstanding the title discrepancy.<sup>4</sup> *Id.*

Similar to the deputy program manager, the CPAT identified several individuals whom Delphinus proposed as logisticians, but were listed in Delphinus's payroll data as holding other positions--specifically, administrative assistant, senior purchaser, office manager, or engineering technician I, III, IV, or V. See AR, Tab 8, CPAT Report at 23, 26; Tab 17, Decl. of CPAT Member, ¶ 6; Tab 6, Delphinus Proposal Vol. IV, attach. 5 at 8, 129, 131-135, 137. In contrast to the proposed deputy program manager, however, the CPAT did not accept the currently billed rates for those individuals as realistic. See AR, Tab 8, CPAT Report at 26. As explained by a CPAT member, this

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<sup>4</sup> While not mentioned by the agency, we further note that Delphinus's technical proposal includes a résumé for its proposed deputy program manager, which indicates that he currently performs in that role. See AR, Tab 3, Delphinus Proposal Vol. I at 49.

was because the job titles listed in the payroll data were “notably different” from the logistician labor category. See AR, Tab 17, Decl. of CPAT Member, ¶ 6. Consequently, the CPAT adjusted the labor rates for those individuals to the minimum rates listed in the RFP for logisticians. See AR, Tab 8, CPAT Report at 23, 26; RFP at 26-27.

The protester contends that the upward adjustment to the labor rates for the logistician positions was unreasonable in light of the agency’s acceptance of currently billed rates for the program manager and deputy program manager. Protest at 13-14. The protester argues that the agency should have similarly found that the currently billed rates for the individuals proposed as logisticians were realistic, rather than adjusting those rates upward. *Id.* The agency responds that its cost realism evaluation was reasonable, as there was sufficient information for the agency to determine that the proposed program manager and deputy program manager were currently performing in those roles, whereas there was not sufficient information to make a similar determination with respect to the logisticians. MOL at 4-5.

When agencies evaluate proposals for the award of cost-reimbursement contracts, an offeror’s proposed estimated costs are generally not dispositive because, regardless of the costs proposed, the government is bound to pay the contract its actual and allowable costs. See FAR 15.305(a)(1), 15.404-1(d); *Palmetto GBA, LLC*, B-298962, B-298962.2, Jan. 16, 2007, 2007 CPD ¶ 25 at 7. Consequently, the agency must perform a cost realism analysis to determine the extent to which an offeror’s proposed costs are realistic for the work to be performed. FAR 15.404-1(d)(1); *Advanced Comm’n Sys., Inc.*, B-283650 *et al.*, Dec. 16, 1999, 2000 CPD ¶ 3 at 5. An agency’s realism analysis need not achieve scientific certainty; rather, the analysis must provide a reasonable measure of confidence that the costs proposed are realistic based on information reasonably available to the agency at the time of its evaluation. *Smartronix, Inc.; ManTech Advanced Sys. Int’l, Inc.*, B-411970 *et al.*, Nov. 25, 2015, 2015 CPD ¶ 373 at 9. Our review of an agency’s cost realism evaluation is limited to determining whether the cost analysis was reasonably based. *Id.*

We conclude that the agency’s cost realism evaluation in this regard was reasonable. The record reflects that there was sufficient information in the protester’s proposal and the RFP’s position descriptions for the agency to reasonably determine that the protester’s currently billed rates for the proposed program manager and deputy program manager were realistic. Similar information, however, was not available for the proposed logisticians. While the RFP contains descriptions of the responsibilities and desired qualifications for logisticians at the entry, journeyman, and senior levels, see RFP at 26-27, it has no similar information for administrative assistant, senior purchaser, or office manager, as those positions are not among the labor categories listed in the RFP, see *generally id.* at 23-31. Unlike the deputy program manager, therefore, the RFP did not provide the agency with a basis to compare the responsibilities and qualifications of an administrative assistant, senior purchaser, or office manager to those of a logistician in order to determine if the individuals currently holding those titles were functionally performing as logisticians. Furthermore, the protester has not identified--and we have not independently discerned--any information

in Delphinus's proposal that demonstrated that those individuals were currently performing those duties.<sup>5</sup> It therefore was reasonable for the agency to conclude that these individuals' current job titles did not support a finding that their currently billed labor rates would be realistic for the logistician positions for which they were proposed.

With respect to the individuals currently holding engineering technician job titles, the RFP does contain descriptions of the responsibilities and desired qualifications for engineering technicians at various levels. See *id.* at 28-31. The protester, however, has not advanced any argument that those responsibilities and desired qualifications are materially similar to those specified in the RFP for logisticians. Broadly speaking, while there does appear to be some overlap in terms of desired qualifications for the ability to operate equipment, the two categories differ substantially in responsibilities. See *id.* at 26-31. On this record, it was reasonable for the agency to find that it could not determine the currently invoiced rates for individuals currently performing as engineering technicians to realistically reflect the rates to be paid to logisticians. We therefore deny the protest allegation regarding the upward adjustments to the protester's direct labor rates.

#### Cost Ceiling Risk

Next, the protester contends that the agency unreasonably assessed its proposal for the risk that Delphinus would reach its cost ceiling prior to completing the required level of effort. This allegation relates to calculations performed by the SSA in comparing the proposals submitted by Delphinus and INDUS under the cost/price factor.

As shown in the BCM, the SSA calculated each offeror's total evaluated cost, less other direct costs, to arrive at a total evaluated burdened labor cost. AR, Tab 12, BCM at 36-37. The SSA then divided that dollar figure for each offeror by the RFP's estimated level of effort to calculate an evaluated average burdened labor rate. *Id.* Lastly, he divided each offeror's *proposed* total cost, less other direct costs, by the evaluated average burdened labor rate to yield how many hours--at the evaluated average burdened labor rate--each offeror was likely to provide before reaching the awarded cost of the task order.<sup>6</sup> *Id.*

As a result of this analysis, the SSA estimated that Delphinus would perform 1,311,480 hours before reaching its proposed cost/price, representing a potential shortfall of 67,520 hours, or 4.9 percent, as compared to the agency's estimated level of

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<sup>5</sup> In that regard, the RFP expressly advised offerors that "[t]he burden of proof for cost credibility rests with the [o]fferor." RFP at 160.

<sup>6</sup> In arguing for the salience of this analysis, the agency represents that cost-reimbursement contracts typically are awarded at the offeror's proposed cost. See MOL at 6 n.2. In that regard, the BCM makes clear that the value of the task order issued to the awardee is INDUS's total proposed cost/price of \$84,518,768, not its total evaluated cost/price of \$86,279,331. See AR, Tab 12, BCM at 38.

effort. *Id.* at 37. The same calculations with respect to INDUS's proposal resulted in an estimate of 1,367,996 hours performed, which was 11,004 hours, or 0.8 percent, below the agency's estimated level of effort. *Id.* Based on these results, the SSA concluded that INDUS's proposal represented a lower cost risk than the protester's, and cited that reduced risk among the reasons that INDUS's proposal represented the best value to the government. *Id.* at 37-38.

The protester alleges that it was unreasonable for the agency to assign this risk to its proposal, as it doubly penalized Delphinus in terms of both the upward adjustment to its total evaluated cost/price and the assessed risk that the protester would reach the task order's ceiling value prior to providing the requisite level of effort. Protest at 15-18. The agency responds that its evaluation was reasonable and consistent with the RFP, which contemplated both a cost realism analysis and a cost risk assessment. MOL at 5-7. The agency adjusted the protester's total evaluated cost/price pursuant to the former, and assessed the risk at issue here pursuant to the latter. *Id.*

We conclude that the agency's evaluation was reasonable and consistent with the RFP. The RFP advised offerors that the agency's "cost realism analysis will determine if the [o]fferor's proposal contains unacceptable risk." RFP at 159, 160. Additionally, in discussing the best-value tradeoff analysis, the RFP stated that the agency would consider "[r]isk assessment, including cost risk," and would consider "its impact on contract performance." *Id.* at 163.

The agency's evaluation here was consistent with that stated evaluation methodology. While the agency's cost realism analysis and resultant upward adjustment to the protester's total evaluated cost/price reflected the agency's estimate of the ultimate cost of the protester's proposal, the risk assessment here evaluated a separate concern, namely, the risk that the agency would pay the full value of the task order prior to receiving the level of effort it required. That assessment is in keeping with the RFP's terms, which advised that the agency would assess cost risk and its impact on contract performance. Moreover, the agency's methodology--applied equally to the proposals submitted by Delphinus and INDUS--is a reasonable method of estimating that risk. The agency determined the portion of each offeror's total evaluated cost/price to be attributed to direct labor, derived an average burdened labor rate based on the level of effort required, and calculated the number of hours each offeror was likely to provide at that average rate prior to reaching its proposed total labor costs. On this record, the protester has not demonstrated that the agency's risk analysis was unreasonable or inconsistent with the RFP.

#### CAS Disclosure Statement

Lastly, the protester contends that the agency engaged in misleading exchanges regarding the necessity of a CAS disclosure statement, and unreasonably assigned a risk to the protester's proposal because Delphinus did not have an adequate disclosure statement. Protest at 19-24. The agency responds that its exchanges reasonably advised the protester of the agency's concern, and that its risk assessment was

reasonable. MOL at 7-13. Our review of the record does not reveal a basis on which to sustain the protest.

The protester's proposal included a statement that "[a]s a small business under [its primary North American Industry Classification System (NAICS) code], Delphinus is not required to file a Disclosure Statement." AR, Tab 5, Delphinus Proposal Vol. IV at 13. Prior to making its best-value determination, the agency emailed the protester requesting clarification, noting first that Delphinus is not a small business under the NAICS code assigned to the RFP. AR, Tab 10, Emails with Delphinus at 3. The agency further stated that "Delphinus is required to submit a [CAS] Disclosure Statement to the cognizant [Defense Contract Management Agency] Administrative Contracting Officer (ACO) and [Defense Contract Audit Agency] Federal auditor," and asked whether Delphinus would "submit the required Disclosure Statement within the next fourteen (14) days[.]" *Id.*

The protester responded that, because it is a small business under its primary NAICS code--which was different than the NAICS code assigned to the RFP--it is "not subject to CAS and [is] not required to prepare/submit a Disclosure Statement for any solicitation or award." *Id.* at 2. The protester stated that, when it provides information regarding a CAS disclosure statement pursuant to FAR provision 52.230-1, Cost Accounting Standards Notices and Certification, it indicates that the paragraph (c)(3) certificate of monetary exemption applies.<sup>7</sup> *Id.* The protester further indicated that if Delphinus "were to exceed the Monetary Exemption, [it] could be subject to the requirements of CAS and a Disclosure Statement." *Id.*

The agency then requested that Delphinus submit a FAR 52.230-1 certificate. *Id.* at 1. The protester provided a completed and signed FAR 52.230-1 certificate, indicating that the paragraph (c)(3) certificate of monetary exemption applied. *Id.* at 1, 5.

In evaluating cost risk, the SSA noted that the SeaPort-NxG IDIQ contract incorporated FAR clause 52.230-2, Cost Accounting Standards, pursuant to which the provisions of 48 C.F.R. part 9903 are incorporated by reference and apply to all solicitations and task orders issued under that contract. AR, Tab 12, BCM at 25. Consequently, the SSA stated, submission of a disclosure statement is required when an offeror is selected to receive a CAS-covered contract of \$50 million or more, as the task order to be issued

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<sup>7</sup> Where a proposal, if accepted, will result in a contract subject to CAS, FAR provision 52.230-1 requires submission of a CAS disclosure statement as part of the proposal, unless the offeror has already submitted such a statement or an exception applies. See FAR provision 52.230-1(b). Under paragraph (c)(3) of that provision, an offeror may certify that it has not received CAS-covered awards totaling \$50 million or more in the cost accounting period immediately preceding the period in which the proposal was submitted, and therefore is not required to submit a disclosure statement with its proposal.

here would be.<sup>8</sup> *Id.* The SSA noted that Delphinus did not have an adequate disclosure statement--as discussed above, the protester had certified that it had not reached the monetary threshold to require submission of a disclosure statement with its proposal--and concluded that Delphinus's lack of an adequate disclosure statement represented a cost and schedule risk. *Id.* at 26-27. The SSA assigned this risk because of the uncertainty when, or if, Delphinus could achieve an adequacy determination by the cognizant federal agency official, and because FAR subsection 30.202-6(b) requires that the cognizant federal agency official make a written determination that a disclosure statement is adequate before a contracting officer can award a CAS-covered contract. *Id.* The SSA found the cost and schedule risk presented by the protester's lack of an adequate disclosure statement to be moderate, and included it among the reasons he found that INDUS's proposal represented the best value. *Id.* at 38.

The protester alleges that the agency's exchanges regarding the disclosure statement were misleading, as the agency did not express any disagreement with the protester's statement that a disclosure statement was not required. Protest at 22. The protester contends that if it had been aware that the agency understood a disclosure statement to be required, it would have submitted a disclosure statement and thereby negated the risk found by the SSA. *Id.*

The regulations concerning discussions under FAR part 15, which pertain to negotiated procurements, do not, as a general rule, govern task and delivery order competitions conducted under FAR subpart 16.5, such as the procurement here. *SigNet Techs., Inc.*, B-417335, B-417335.2, May 28, 2019, 2019 CPD ¶ 202 at 3-4. While section 16.505 of the FAR does not establish requirements for discussions or clarifications in a task order competition, when exchanges occur they must be fair and not misleading. *Id.* at 4. Here, we conclude that the agency's exchanges with the protester were not misleading.

The record reflects that the agency determined that, in order to issue the task order, the selected offeror was required to have an adequate disclosure statement pursuant to FAR subsection 30.202-6(b).<sup>9</sup> The protester's proposal, however, stated that the protester was not required to file a disclosure statement. The agency therefore contacted the protester, stating that the protester was required to submit a disclosure statement to the appropriate officials, and asking whether the protester would submit

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<sup>8</sup> As relevant here, FAR clause 52.230-2 states, in part, that "the Contractor, in connection with this contract, shall . . . [b]y submission of a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 48 C.F.R. 9903.202-1 through 9903.202-5[.]" In turn, 48 C.F.R. § 9903.202-5(b) requires submission of a disclosure statement to "the cognizant ACO or cognizant Federal agency official acting in that capacity" and "the cognizant Federal auditor."

<sup>9</sup> Our Office similarly has recognized that submission of a disclosure statement is a "condition of contracting" for a CAS-covered contract valued at \$50 million or more. *See Northrop Grumman Space and Missile Sys. Corp.; Textron Marine & Land Sys. Corp.*, B-400837 *et al.*, Feb. 17, 2009, 2009 CPD ¶ 52 at 13.



that disclosure statement. Thus, the agency apprised the protester of the agency's concern, *i.e.*, that the protester was required to submit a disclosure statement, contrary to the indication in the protester's proposal.

In response, the protester stated that it had not yet reached the monetary threshold to require submission of a disclosure statement with its proposal, as is required under FAR provision 52.230-1(b) unless an exception, such as the monetary exemption under paragraph (c)(3) of that provision, applies. The protester further stated that it was aware that if it exceeded the monetary exemption--which the protester's total proposed cost/price of \$79,144,784 would have--it could be subject to the requirement to have an adequate disclosure statement. It therefore also appears that the protester was aware of the agency's concern that an adequate disclosure statement was required, but took the position that it was not required to submit that statement with its proposal pursuant to the monetary exemption found at FAR 52.230-1(c)(3). On this record, we conclude that the protester has not demonstrated that the exchanges regarding the necessity of a disclosure statement were misleading.

Relatedly, the protester alleges that the agency unreasonably assessed a cost and schedule risk with respect to Delphinus's lack of an adequate disclosure statement. Protest at 23-24. We previously have concluded that, where a solicitation for a contract that will require an adequate CAS disclosure statement advises offerors that the agency will evaluate the cost risks of their proposals, the agency properly may consider the risk associated with an offeror's lack of an adequate disclosure statement. *See Keane Fed. Sys., Inc.*, B-280595, Oct. 23, 1998, 98-2 CPD ¶ 132 at 11. Here, the SSA noted that the protester did not have an adequate disclosure statement, which entailed risks to the agency stemming from the uncertainty regarding both the submission and review of a disclosure statement. Under the circumstances, we cannot conclude that the agency's concerns were unreasonable.

#### Tradeoff Analysis

Finally, the protester challenges the agency's best-value tradeoff. Where, as here, a solicitation provides for issuance of a task order on a best-value tradeoff basis, it is the function of the SSA to perform a price/technical tradeoff. *Alliant Enter. JV, LLC*, B-410352.5, B-410352.6, July 1, 2015, 2015 CPD ¶ 209 at 13. An agency has broad discretion in making a tradeoff between price and non-price factors, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the solicitation's stated evaluation criteria. *Id.* at 14. A protester's disagreement with the agency's determination, without more, does not establish that the evaluation or source selection was unreasonable. *Engility Corp., supra* at 16.

As an initial matter, the protester alleges that the agency's best-value tradeoff was based upon an improper evaluation. Protest at 49-50. As discussed above, we find no basis to object to the agency's underlying evaluation of the protester's proposal. That derivative challenge therefore is denied.

The protester also contends that the agency's approach to assessing the impact of strengths and weaknesses was unreasonable. *Id.* at 32-33. Specifically, the protester alleges that the SSA examined strengths and weaknesses with respect only to the breadth of their impact, *i.e.*, the percentage of the estimated level of effort that they affected, without accounting for the magnitude of each strength or weakness. *Id.* As the agency points out, however, the SSA determined that certain strengths had "significant" benefits. MOL at 18. For example, the SSA determined that the protester's proposal had a strength under the technical approach and capability factor that both "had significant benefit" and "impacts 10 [percent] of the estimated level of effort[.]" AR, Tab 12, BCM at 35. Similarly, the SSA determined that INDUS's proposal had a strength under that same factor, which the SSA found both "to have significant benefits" and to "impact 27 [percent] of the estimated level of effort." *Id.* Thus, to whatever extent it might be unreasonable for an agency to consider only the breadth, and not the magnitude, of the impact of strengths and weaknesses, the record here demonstrates that the agency considered both. We therefore deny this protest allegation.

Finally, the record similarly refutes the protester's allegation that the SSA failed to consider past performance in conducting his best-value tradeoff. See Protest at 50. The record reflects that the SSA considered the protester's superior past performance to be a discriminator in its favor, further stating that he considered that discriminator to be "significant because the rating is based on exceptional past performance on a very relevant task order." *Id.* at 36. Thus, contrary to the protester's allegation, the record demonstrates that the SSA considered the protester's advantage in past performance--the third most important non-cost/price factor--in comparing the two proposals, and this allegation provides no basis to sustain the protest.

The protest is denied.

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